Supreme Court, U.S.
FILED
AUG 23 2002
OFFICE OF THE CLERK

Nos. 01-593, 01-594

IN THE

Supreme Court of the United States

DOLE FOOD COMPANY, *et al.*,

Petitioners,

v.

GERARDO DENNIS PATRICKSON, *et al.*,

Respondents.

DEAD SEA BROMINE CO. LTD, *et al.*,

Petitioners,

v.

GERARDO DENNIS PATRICKSON, *et al.*,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

JONATHAN S. MASSEY
Counsel of Record
JONATHAN S. MASSEY, P.C.
3920 Northampton Street, N.W.
Washington, DC 20015
(202) 686-0457
Counsel for Respondents

ROBERT H. KLONOFF
Counsel of Record
DANIEL H. BROMBERG
JONES, DAY, REAVIS & POGUE
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939

Counsel for Petitioners Dole Food Company, Inc.; Dole Fresh Fruit Company; Dole Fresh Fruit International, Inc.; Dole Fresh Fruit International, Ltd.; Standard Fruit Company; Standard Fruit and Steamship Company; Standard Fruit Company de Honduras, S.A.; and Standard Fruit Company de Costa Rica, S.A.

Peter R. Paden
Counsel of Record
Philip E. Karmel
Laurence A. Horvath
BRYAN CAVE LLP
1290 Avenue of the Americas
New York, NY 10104
(212) 541-1080

Counsel for Dead Sea Bromine Co., Ltd. and Bromine Corporation, Limited

[Additional Counsel Listed on Inside Cover]

Petitions for Certiorari Filed October 5, 2001
Certiorari Granted June 28, 2002

273 pp

SCOTT HENDLER
THE HENDLER LAW FIRM
816 Congress Avenue
Suite 1100
Austin, TX 78701
(512) 473-3672

MICHAEL J. BRICKMAN
CHRISTIAN H. HARTLEY
NESS, MOTLEY, LOADHOLT
RICHARDSON & POOLE
28 Bridge Side Boulevard
Mt. Pleasant, SC 29401
(843) 216-9000

Counsel for Respondents

TERENCE M. MURPHY
JAMES S. TEATER
MICHAEL L. RICE
JONES, DAY, REAVIS & POGUE
2727 N. Harwood Street
Dallas, TX 75201
(214) 220-3939

Counsel for Dole Food Company, Inc.; Dole Fresh Fruit Company; Dole Fresh Fruit International, Inc.; Dole Fresh Fruit International, Ltd.; Standard Fruit Company; Standard Fruit and Steamship Company; Standard Fruit Company de Honduras, S.A.; and Standard Fruit Company de Costa Rica, S.A.

GEORGE W. BRANDT
LYONS, BRANDT, COOK &
HIRAMATSU
18800 Davis Pacific Center
841 Bishop Street
Honolulu, HI 96813
(808) 524-7030

Counsel for Dead Sea Bromine Co., Ltd. and Bromine Corporation, Limited

ROBERT G. CROW
BOORNAZIAN, JENSEN &
GARTHE
1800 Harrison Street, 25th Floor
Oakland, CA 94612

RICHARD C. SUTTON, JR.
RUSH, MOORE, CRAVEN,
SUTTON, MOORY & BEH
2000 Hawaii Tower
745 Fort Street
Honolulu, HI 96813

Counsel for Petitioner AMVAC Chemical Corporation

SAMUEL E. STUBBS
WILLIAM D. WOOD
FULBRIGHT & JAWORSKI, L.L.P.
1301 McKinney, Suite 5100
Houston, TX 77010

Counsel for Petitioners Chiquita Brands, Inc.; Chiquita Brands International, Inc.; and Maritrop Trading Corporation

ROBERT T. GREIG
BOAZ S. MORAG
CLEARY, GOTTLIEB, STEEN &
HAMILTON
One Liberty Plaza
New York, NY 10006

JOHN R. MYRDAL
STANTON CLAY CHAPMAN
CRUMPTON & IWAMURA
East Tower, Suite 2100
700 Bishop Street
Honolulu, HI 96813

Counsel for Petitioners Del Monte Fresh Produce N.A., Inc.; Del Monte Fresh Produce Hawaii, Inc.; Del Monte Fresh Produce Company; and Fresh Del Monte Produce N.V.

MICHAEL L. BREM
F. WALTER CONRAD, JR.
BAKER & BOTTS, L.L.P.
910 Louisiana Street
Houston, TX 77002

Counsel for Petitioner The Dow Chemical Company

D. FERGUSON MCNIEL, III
CHARLES W. SCHWARTZ
VINSON & ELKINS, L.L.P.
2300 First City Tower
1001 Fannin Street
Houston, TX 77002
Counsel for Petitioner Occidental Chemical Corporation

JOHN T. KOMEIJI
ROBERT T. TAKAMATSU
WATANABE, ING & KAWASHIMA
999 Bishop Street, Suite 2300
Honolulu, HI 96813

Counsel for Petitioner Pineapple Growers Association of Hawaii

R. BURTON BALLANFANT
SHELL OIL COMPANY
4856 One Shell Plaza
900 Louisiana Street
Houston, TX 77002

DALE W. LEE
KOBOYASHI, SUGITA & GODA
999 Bishop Street, Suite 2600
Honolulu, HI 96813

Counsel for Petitioner Shell Oil Company

TABLE OF CONTENTS

Page

Relevant Docket Entries
United States District Court For The District of Hawaii 1
United States Court of Appeals For The Ninth Circuit 10
Third Party Complaint (October 31, 1997) 11
Amended Complaint (March 2, 1998) 15
Dead Sea Answer to Third Party Complaint (November 20, 1997) 53
Declaration of Noah Ehrlich 68
Declaration of Daniel Sugarman 81
Declaration of Noam Heth-Makov 83
Declaration of Bat-Sheva Golan 85
Declaration of Peter R. Paden 89
Bromine Compounds, Ltd. and Dead Sea Bromine Company, Ltd. Ownership Charts 92
Excerpts from Dead Sea Bromine Company, Ltd.'s Articles of Association 96
Excerpts from Bromine Compounds, Ltd.'s Articles of Association 110
Dead Sea Concession Law 5721-1961 124
Dead Sea Concession (Amendment) Law 5728-1968 151
Sub-Concession of the Dead Sea Bromine Company, Ltd. 153
Government Companies Law 175
Affidavit of Dov Weissglas 223
Excerpts from Deposition of Noah Ehrlich 229

RELEVANT DOCKET ENTRIES

I. THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII, CV-97-1516

1.	10/31/97	Notice of Removal from First Circuit Case Number: CV 97-4062-09
2.	11/03/97	Supplemental Notice of Removal
3.	11/12/97	First Amended Answer by Defendant Pineapple Growers Ass'n
4.	11/12/97	Answer by Defendant Occidental Chem Corp.
5.	11/12/97	Answer by Defendant Shell Oil Co.
6.	11/12/97	Answer by Defendant Dow Chemical Co.
7.	11/12/97	Answer by Defendant Chiquita Brands Inc., Defendant Chiquita Brands Int'l, Defendant Maritrop Trading Corp.
8.	11/20/97	Answer to Third Party Complaint by Third-Party Defendants Dead Sea Bromine Co., and Bromine
9.	11/20/97	Answer by Defendant Amvac Chemical Corp.
10.	12/02/97	Notice of Motion and Motion by Plaintiff Gerardo Dennis Patrickson et. al for Remand and in Opposition to the Supplemental Grounds for Removal
11.	12/02/97	Memorandum of Points and Authorities in Support of Motion for Removal
12.	12/03/97	Notice of Motion and Motion by Plaintiff Gerardo Dennis Patrickson, et. al for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction.
13.	12/03/97	Memorandum of Points and Authorities in Support of Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction.
14.	12/05/97	Supplemental Declaration of Counsel by Plaintiffs in Support of Plaintiffs' Motion for

		Remand and in Opposition to the Supplemental Grounds for Removal
15.	12/05/97	Supplemental Declaration of Counsel by Plaintiffs in Support of Plaintiffs' Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction
16.	12/17/97	Notice of Motion and Motion by Defendant Del Monte Fresh Produce to Dismiss for Failure to State a Claim and for Lack of Personal Jurisdiction
17.	12/17/97	Memorandum of Points and Authorities in Support of Motion to Dismiss
18.	12/24/97	Notice of Motion and Motion by Defendant Dow Chemical Co. to Dismiss and for Injunctive Relief
19.	12/24/97	Memorandum of Points and Authorities in Support of Motion to Dismiss and for Injunctive Relief
20.	03/03/98	Amended Complaint Terminating Plaintiff Melgar Olimpio Moreno; Adding Del Monte Fresh Hawaii, Del Monte Fresh Produce Co. and Fresh Del Monte N.V.
21.	03/06/98	Motion by Defendant Standard Fruit Co. to Dismiss for Lack of Personal of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
22.	03/06/98	Memorandum in Support of Motion to Dismiss
23.	03/06/98	Motion by Defendant Standard Fruit and Steamship to Dismiss or for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
24.	03/06/98	Memorandum in Support of Motion to Dismiss
25.	03/06/98	Motion by Defendant Standard Fruit Co. Costa Rica to Dismiss for Lack of Personal

		Jurisdiction, Improper Venue and Insufficiency of Service of Process
26.	03/06/98	Memorandum in Support of Motion to Dismiss
27.	03/06/98	Motion by Defendant Standard Fruit Co de Honduras to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Service of Process
28.	03/06/98	Memorandum in Support of Motion to Dismiss
29.	03/06/98	Motion by Defendant Dole Fresh Fruit Int'l Ltd. to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
30.	03/06/98	Memorandum in Support of Motion to Dismiss
31.	03/06/98	Motion by Defendant Dole Fresh Fruit Int'l Inc. to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
32.	03/06/98	Memorandum in Support of Motion to Dismiss
33.	03/18/98	Response by Plaintiffs to Defendants' Motion to Dismiss on Forum Non Conveniens and Comity Grounds; to Motion to Dismiss for Failure to State a Claim and for Lack of Personal Jurisdiction
34.	03/19/98	Memorandum of Law by Third-Party Defendants Dead Sea Bromine Co. and Bromine Compounds in Opposition to Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction
35.	03/19/98	Appendix Filed by Third-Party Defendants' Dead Sea Bromine Co. and Bromine Compounds re Memorandum of Law in Opposition to Motion to Remand

36.	03/19/98	Answer by Defendant Pineapple Growers as to Amended Complaint
37.	03/19/98	Answer by Defendant Standard Fruit Co. to Amended Complaint
38.	03/19/98	Answer by Defendant Standard Fruit Co. de Honduras to Amended Complaint
39.	03/19/98	Answer by Defendant Standard Fruit & Steamship Co. to Amended Complaint
40.	03/19/98	Answer by Defendant Dole Food Co. to Amended Complaint
41.	03/19/98	Answer by Defendant Dole Fresh Fruit Co. to Amended Complaint
42.	03/19/98	Answer by Defendant Dole Fresh Fruit Inc. to Amended Complaint
43.	03/19/98	Answer by Defendant Dole Fresh Fruit Int'l. Ltd. to Amended Complaint
44.	03/19/98	Answer by Defendant Standard Fruit Co. Costa Rica to Amended Complaint
45.	03/19/98	Joint Memorandum by Defendants Dole Food Co., Pineapple Growers, Amvac Chem. Corp., Shell Oil Co., Dow Chem. Co., Occidental Chem. Corp., Chiquita Brands Inc., Chiquita Brands Int'l, Del Monte Fresh Prod., Del Monte Fresh Produce in Opposition to Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction and to Motion for Remand and in Opposition to the Supplemental Grounds for Removal
46.	03/24/98	Amended Answer by Defendant Dow Chemical Co.
47.	03/25/98	Reply by Plaintiffs to Third-Party Defendants Dead Sea Bromine Co. Ltd. and Bromine Compounds Limited's Response to Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction and

		Motion for Remand and in Opposition to the Supplemental Grounds for Removal
48.	03/26/98	Answer by Defendant Occidental Chem. Corp. to Amended Complaint
49.	03/26/98	Reply by Plaintiffs to Defendants' Joint Response to Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction and Motion for Remand and in Opposition to the Supplemental Grounds for Removal
50.	03/26/98	Reply by Defendants Shell Oil Co., Dole Food Co., Dole Fresh Fruit Co., Dole Fresh Fruit Int'l, Dole Fresh Fruit Inc., Standard Fruit Co., Standard Fruit & Steamship, Standard Fruit Co. Costa Rica, Standard Fruit Co. Honduras, Pineapple Growers Ass'n, Dow Chem. Co., Del Monte Fresh Produce, Del Monte Fresh Produce Co., Chiquita Brands Inc., Chiquita Brands Int'l, Occidental Chem. Corp. to Response to Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
51.	03/27/98	Answer by Defendant Shell Oil Co. to Amended Complaint
52.	04/02/98	Answer by Defendants Chiquita Brands Inc., Chiquita Brands Int'l, Maritrop Trading Corp. to Amended Complaint
53.	04/10/98	Answer by Defendant Amvac Chem. Corp. to Amended Complaint
54.	05/14/98	Memorandum by Plaintiffs in Opposition to Dole Fresh Fruit Int'l, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process

55.	05/14/98	Memorandum by Plaintiffs in Opposition to Standard Fruit Co.'s Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
56.	05/14/98	Memorandum by Plaintiff in Opposition to Standard Fruit & Steamship Co.'s Motion to Dismiss or for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
57.	05/14/98	Memorandum by Plaintiff in Opposition to Standard Fruit Co. de Costa Rica S.A's Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
58.	05/14/98	Memorandum by Plaintiff in Opposition to Standard Fruit Co. de Honduras, S.A.'s Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
59.	05/14/98	Memorandum by Plaintiff in Opposition to Dole Fresh Fruit Int'l, Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue and Insufficiency of Service of Process
60.	08/18/98	Answer by Defendant Shell Oil Co. to Amended Complaint
61.	09/09/98	Order Denying Plaintiffs' Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction and Denying Plaintiffs' Motion for Remand and in Opposition to the Supplemental Grounds for Removal and Granting Certain Defendants' Motion to Dismiss and for Injunctive Relief Filed 12/24/97 and Denying Plaintiffs' Motion to Strike Defendants' Supplemental Affidavits

62. 09/09/98 Order Conditionally Granting Defendants' Motion to Dismiss on Forum Non Conveniens Grounds
63. 09/18/98 Motion by Plaintiffs to Alter or Amend Judgment under Rule 59(e)
64. 09/18/98 Memorandum in Support of Motion to Alter or Amend Judgment
65. 09/23/98 Notice of Motion and Motion by Defendants Chiquita Brands Inc., Chiquita Brands Int'l, Maritrop Trading Corp. for Clarification, or, in the Alternative, for Reconsideration of the Court's 9/9/98 Order Denying Plaintiffs' Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction and Denying Plaintiffs' Motion for Remand and in Opposition to the Supplemental Grounds for Removal and Granting Certain Defendants' Motion to Dismiss and for Injunctive Relief Filed 12/24/97 and Denying Plaintiffs' Motion to Strike Defendants' Supplemental Affidavits
66. 09/23/98 Memorandum in Support in Motion for Clarification
67. 09/24/98 Second Motion and Memorandum by Plaintiffs to Alter or Amend Judgment under Rule 59(e)
68. 10/01/98 Memorandum by Defendants Dole Food Co., Dole Fresh Fruit Int'l, Dole Fresh Fruit Inc., Standard Fruit Co., Standard Fruit & Steamship, Standard Fruit Co. de Costa Rica, Standard Fruit Co. de Honduras, Dow Chem. Co. in Opposition to Motion to Alter or Amend Judgment under Rule 59(e)
69. 10/02/98 Memorandum by Plaintiffs in Opposition to Motion for Clarification, or, in the Alternative, for Reconsideration of the

		Court's 9/9/98 Order Denying Plaintiffs' Motion for Remand and in Opposition to the Dead Sea Defendants' Assertion of Foreign Sovereign Immunities Act Jurisdiction and Denying Plaintiffs' Motion for Remand and in Opposition to the Supplemental Grounds for Removal and Granting Certain Defendants' Motion to Dismiss and for Injunctive Relief Filed 12/24/97 and Denying Plaintiffs' Motion to Strike Defendants' Supplemental Affidavits
70.	10/02/98	Memorandum by Plaintiffs in Opposition to Motion for Reconsideration of the Court's FSIA Ruling
71.	10/13/98	Reply by Plaintiffs to Response to Motion to Alter or Amend Judgment under Rule 59(e)
72.	10/14/98	Reply Memorandum of Law by Third-Party Defendants Dead Sea Bromine Co., and Bromine Compounds to Response to Motion for Reconsideration of the Court's FSIA Ruling
73.	10/15/98	Reply Memorandum by Defendants Chiquita Brands Inc., Chiquita Brands Int'l, Maritrop Trading Corp. to Response to Motion for Clarification, Or, in the Alternative, for Reconsideration of the Court's 9/9/98 Order
74.	10/19/98	Order Denying Plaintiff's Motion to Alter or Amend Judgment under Rule 59(e)
75.	10/19/98	Order Granting Plaintiffs' Motion to Alter or Amend Judgment under Rule 59(e) and Granting Defendants Chiquita Brands, Inc., Chiquita Brands Int'l, Inc. and Maritrop Trading Corp.'s Motion for Clarification; Clarifies the Issue Raised by Defendants Chiquita Brands, Inc., et. al Re: Personal Jurisdiction; and Amends the 9/9/98 Order to Read, Beginning on Page 62: "This Action

		Will Be Dismissed 90 Days after the Filing Date" Is Stricken; and Inserted Is "This Action Will Be Dismissed 180 Days after the Filing Date of this Order Provided. . ."
76.	11/17/98	Order Denying Third Party Defendants Dead Sea Bromine Co., Ltd. and Bromine Compound Limited's Motion for Reconsideration of the Court's FSIA Ruling
77.	03/08/99	Order Dismissing Action and Accepting in Part and Rejecting in Part Various Defendants' Agreements Regarding Conditions of Dismissal for Forum Non Conveniens
78.	03/11/99	Judgment: Entered Pursuant to the "Order Dismissing Action and Accepting in Part and Rejecting in Part Del Monte Defendants' Agreements Regarding Conditions of Dismissal for Forum Non Conveniens, et. al."
79.	03/19/99	Notice of Dole Defendants' Motion to Alter or Amend Judgment under Rule 59(3) and 59(e)
80.	03/19/99	Memorandum in Support of Motion to Alter or Amend
81.	03/22/99	Notice of Motion and Motion to Reconsider under Rule 59(e)
82.	04/14/99	Reply to Plaintiffs' Response to Dole Defendants' Motion to Alter or Amend Judgment under Rule 59(e)
83.	04/15/99	Reply by Del Monte Defendants to Plaintiffs' Response to Motion of the Del Monte Defendants in Support of Their Motion to Alter or Amend Judgment under Rule 59(e)
84.	04/26/99	Memorandum by Defendant Dow Chem. Co. in Opposition to Plaintiffs' Motion to Reconsider Rule 59(e) and Supplemental Motion to Reconsider under Rule 59(e)

85. 06/16/99 Order Denying Dole Defendants' and Del Monte Defendants' Motions to Alter or Amend Judgment under Rule 59(e)
86. 06/30/99 Notice of Appeal by Plaintiff
87. 07/14/99 Notice of Cross-Appeal by Third-Party Defendants Dead Sea Bromine Co. and Bromine Compounds

II. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 99-16524

1. 10/18/99 Patrickson et. al First Brief on Cross-Appeal
2. 12/30/99 Brief of Appellee Dole Food Co., Standard Fruit, et. al
3. 01/03/00 Second Brief of Third-Party Defendants/appellants/Cross Appellants Dead Sea Bromine, and Bromine Compounds on Cross-Appeal
4. 01/14/00 Defendants' Unopposed Motion to File an Addendum to the Previously Filed Answer/Opening Brief
5. 03/10/00 Third Brief of Appellants Gerardo Dennis Patrickson, et. al., on Cross-Appeal
6. 03/27/00 Reply Brief of Dead Sea Bromine, and Bromine Compounds
7. 05/30/01 Opinion
8. 06/12/01 Appellees Petition for Rehearing with Suggestion for Rehearing En Banc
9. 06/13/01 Appellees/Cross-Appellants Dead Sea Bromine, and Bromine Compounds Petition for Rehearing with Suggestion for Rehearing En Banc
10. 07/10/01 Order Denying Petitions for Rehearing and for Rehearing En Banc

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

GERARDO DENNIS PATRICKSON; RODOLFO BERMUDEZ ARIAS; BENIGNO TORRES HERNANDEZ; FERNANDO JIMENEZ ARIAS; MELGAR OLIMPIO MORENO; SANTOS LEANDROS; HERMAN ROMERO AGUILAR; ELIAS ESPINOZA MERELO HOOKER ERA CELESTINO; ALIKIO MANUEL MENDEZ and CARLOS HUMBERTO RIVERA, individually and on behalf of others similarly situated, Plaintiffs, vs. DOLE FOOD COMPANY, INC., et al., Defendants. DOLE FOOD COMPANY, INC. Defendant/Third-Party Plaintiff,	CIVIL NO. 97-4062-09 (Other Non-vehicle Tort) (Class Action) DEFENDANT DOLE FOOD COMPANY, INC.'S THIRD PARTY COMPLAINT; SUMMONS; CERTIFICATE OF SERVICE

vs.

DEAD SEA BROMINE CO., LTD. and BROMINE COMPOUNDS LIMITED,

Third/Party Defendants.

DEFENDANT DOLE FOOD COMPANY, INC.'S THIRD PARTY COMPLAINT

Pursuant to Hawaii Rule of Civil Procedure 14 and within ten days after serving its original answer, defendant Dole Food Company, Inc. ("Dole") hereby files its third-party complaint complaining of Dead Sea Bromine Co., Ltd. and Bromine Compounds Limited ("Third-Party Defendants"), and respectfully shows the Court as follows:

I.

1. Third-Party defendant Dead Sea Bromine Co., Ltd. ("Dead Sea") is a foreign corporation incorporated in the State of Israel, "a majority of whose shares or other ownership interest [was] owned by a foreign state" during all times relevant to this lawsuit. See Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1603(b)(2). As such, Dead Sea is "[a]n 'agent or instrumentality' of a foreign state" under the FSIA, 28 U.S.C. § 1603(b), and may be served with citation as provided by the FSIA. 28 U.S.C. § 1608.

2. Third-Party defendant Bromine Compounds Ltd. ("Bromine Compounds") is a foreign corporation incorporated in the State of Israel, "a majority of whose shares or other ownership interest [was] owned by a foreign state" during all times relevant to this lawsuit. See Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1603(b)(2). As such,

Bromine Compounds is "[a]n 'agent or instrumentality' of a foreign state" under the FSIA, 28 U.S.C. § 1603(b), and may be served with citation as provided by the FSIA. 28 U.S.C. § 1608.

II.

3. Plaintiffs have sued defendants, including Dole, seeking to recover damages allegedly incurred as a result of their alleged exposure to dibromochloropropane ("DBCP") in their respective foreign countries. Plaintiffs allege that the DBCP to which they were exposed was manufactured, sold, distributed and used by various parties, including Dole. Plaintiffs, however, have named as defendants only certain manufacturers, sellers and distributors of DBCP.

4. During all times relevant to this lawsuit, the Third-Party Defendants were manufacturers and/or sellers and/or distributors of DBCP and sold to, among others, one or more of the defendants in this lawsuit.

5. To the extent, if any, that Plaintiffs were exposed to DBCP, such DBCP was, in whole or in part, manufactured, distributed and/or sold by the Third-Party Defendants. As a result, each of the Third-Party Defendants is a party who is or may be liable to Dole or to plaintiffs for all or part of Plaintiff's claims against Dole.

III.

6. Dole denies that it was negligent or that it committed any act contributing to or independently causing the harm complained of by Plaintiffs. Should the jury find otherwise, however, Dole is entitled to reimbursement from the Third-Party Defendants by way of contribution, indemnity or otherwise, in the amount of any judgment that may be rendered herein in favor of plaintiffs and against Dole.

WHEREFORE, Dole prays as follows:

A. That the Complaint herein be dismissed against it and that it have its costs and attorneys' fees;

B. That Dole have judgment in accordance with the law and the facts;

C. That if Plaintiffs or any of them is found entitled to judgment that such judgment be entered only against Third-Party Defendants;

D. That if Plaintiffs or any of them recovers judgment against Dole, that Dole have judgment over and against Third-Party Defendants; and

E. That the Court award Dole its costs and such other and further relief, legal and equitable, as the Court deems just and proper.

Dated: Honolulu, Hawaii: October 31, 1997

John R. Lacy, Esq.
Bruce L. Lamon, Esq.

Attorneys for Defendant
Dole Food Company, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERARDO DENNIS PATRICKSON; RODOLFO BERMUDEZ ARIAS; BENIGNO TORRES HERNANDEZ; FERNANDO JIMENEZ ARIAS; SANTOS LEANDROS; HERMAN ROMERO AGUILAR; ELIAS ESPINOZA) MERELO HOOKER ERA CELESTINO; ALIRIO MANUEL MENDEZ; and CARLOS HUMBERTO RIVERA, individually and on behalf of others similarly situated, Plaintiffs, vs. DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY; DOLE FRESH FRUIT INTERNATIONAL, LIMITED; DOLE FRESH FRUIT INTERNATIONAL, INC.; PINEAPPLE GROWERS ASSOCIATION OF HAWAII; AMVAC CHEMICAL CORPORATION; SHELL OIL COMPANY; DOW CHEMICAL COMPANY;	CIVIL ACTION NO. 97-01516 HG (Re Civil No. 97-4062-09, Circuit Court of the First Circuit, State of Hawaii) (Other Non-vehicle Tort) (Class Action) AMENDED COMPLAINT; DEMAND FOR JURY TRIAL; SUMMONS TO ANSWER CIVIL COMPLAINT

OCCIDENTAL CHEMICAL)
CORPORATION)
(individually and as successor)
to Occidental Chemical)
Company and Occidental)
Chemical Agricultural)
Products, Inc., Hooker)
Chemical and Plastics,)
Occidental Chemical)
Company of Texas and Best)
Fertilizer Company);)
STANDARD FRUIT)
COMPANY; STANDARD)
FRUIT AND STEAMSHIP)
COMPANY; STANDARD)
FRUIT COMPANY de)
COSTA RICA, S.A.;)
STANDARD FRUIT)
COMPANY de)
HONDURAS, S.A.;)
CHIQUITA BRANDS, INC.;)
CHIIQUITA BRANDS)
INTERNATIONAL, INC.)
(individually and as successor)
in interest to United Brands)
Company, Inc.); MARITROP)
TRADING CORPORATION;)
DEL MONTE FRESH)
PRODUCE, N.A.; DEL)
MONTE FRESH PRODUCE)
COMPANY; DEL MONTE)
FRESH PRODUCE)
HAWAII, INC.; DEL)
MONTE FRESH PRODUCE)
COMPANY AND FRESH)
DEL MONTE N.V.; JOHN)
DOES 1-10; JANE DOES 1-)

10; DOE PARTNERSHIPS 1-10; and DOE CORPORATIONS 1-10,

Defendants.

COMPLAINT

Plaintiffs above-named, by and through their attorneys Christian Hartley, Esq. and Ness Motley Loadholt Richardson and Poole, and James Krueger, Esq. and Damon Key Leong Kupchak Hastert, file this Complaint against the Defendants above-named and allege as follows:

I. PRELIMINARY STATEMENT

1. Plaintiffs are citizens of the countries of Costa Rica, Ecuador, Guatemala and Panama. The Plaintiffs, and those similarly situated people have had their health, welfare, and lives damaged as a result of exposure to an extremely hazardous chemical pesticide, dibromochloropropane ("DBCP"), made by some of the Defendants and used by others of the Defendants on their farms where the Plaintiffs worked.

2. This civil class action is brought by Plaintiffs to recover compensation for damages to their health, welfare, and lives that resulted from the injuries caused by the Defendants.

II. JURISDICTION

3. This Court has subject matter jurisdiction to hear the claims in this Complaint pursuant to Haw. Rev. Stat. § 603-21.5, personal jurisdiction over the Defendants pursuant to Haw. Rev. Stat. § 634-35 and venue over the claims in this Complaint pursuant to Haw. Rev. Stat. § 603-36.

III. PARTIES

4. The following Plaintiffs will serve as class representatives for the class represented in this case:

a. Plaintiffs Gerardo Dennis Patrickson, Rodolfo Bermudez Arias, Benigno Torres Hernandez, and Fernando Jimenez Arias are residents of the country of Costa Rica and were exposed to and injured by the chemical pesticide, dibromochloropropane (DBCP) in their home country;

b. Plaintiffs Herman Romero Aguilar and Elias Espinoza Merelo are residents of the country of Ecuador and were exposed to and injured by the chemical pesticide, dibromochloropropane (DBCP) in their home country;

c. Plaintiffs Alirio Manuel Mendez and Carlos Humberto Rivera are residents of the country of Guatemala and were exposed to and injured by the chemical pesticide dibromochloropropane (DBCP) in their home country; and

d. Plaintiffs Santos Leandros and Hooker Era Celestino are residents of the country of Panama and were exposed to and injured by the chemical pesticide dibromochloropropane (DBCP) in their home country. These representative Plaintiffs bring this civil class action on behalf of all workers similarly situated with claims arising out of exposure to the chemical pesticide DBCP.

5. Defendant Dole Food Company, Inc. is a Hawaii corporation doing business in the State of Hawaii and which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. Dole Food Company, Inc. is the successor in interest to Castle & Cooke, Inc. and Standard Fruit & Steamship Company.

6. Defendant Pineapple Growers Association of Hawaii is a California corporation with its principal place of business in Hawaii. Pineapple Growers Association of Hawaii, at all times pertinent herein, was authorized to do and was doing

business within the jurisdiction of this Honorable Court. The Pineapple Growers Association of Hawaii is the successor in interest, alter ego and agent of the Pineapple Research Institute, the entity which developed and tested DBCP in Hawaii. The Pineapple Growers Association of Hawaii is the alter ego agent of Dole Food Co., Inc. and Del Monte Food Company, Del Monte Fresh Produce N.A., and Del Monte Fresh Produce Hawaii, Inc.

7. Defendant Dow Chemical Company is a Delaware corporation with its principal place of business in Michigan, and which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

8. Defendant Occidental Chemical Corporation is a New York corporation with its principal place of business in Texas, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

9. Defendant Amvac Chemical Corporation is a California corporation with its principal place of business in California, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

10. Defendant Shell Oil Company is a Delaware corporation with its principal place of business in Texas, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

11. Defendant Dole Food Company, Inc. at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. Dole Food Company, Inc. is the ultimate parent corporation of Standard Fruit Company, Standard Fruit and Steamship Company, Dole Fresh Fruit Company, Standard Fruit Company de Costa Rica,

S.A., Standard Fruit Company de Honduras, S.A., Dole Fresh Fruit International, Ltd., Dole Fresh Fruit International, Inc. (the "Dole Defendants"). These subsidiaries are so integrated and controlled by Dole Food Company, Inc. that they are the alter ego of Dole Food Company, Inc. The Plaintiffs are suing the Dole Defendants for the tortious activities performed at the behest and under the control of Dole Food Co., Inc.

12. Defendant Standard Fruit and Steamship Company is a Delaware corporation with its principal place of business in California, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. This corporation is the alter ego/agent of Dole Food Company, Inc., Standard Fruit Company, and/or Dole Fresh Fruit Company, and its foreign subsidiaries.

13. Defendant Standard Fruit Company is a Delaware corporation, with its principal place of business in Ecuador, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. This corporation is the alter ego/agent of Dole Food Company, Inc., Standard Fruit and Steamship Company, and/or Dole Fresh Fruit Company. Standard Fruit Company is the alter ego of its foreign subsidiaries.

14. Defendant Dole Fresh Fruit Company is a Nevada corporation with its principal place of business in California, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. Dole Fresh Fruit Company is an alter ego/agent of Standard Fruit Company, Standard Fruit and Steamship Company, Dole Food Company, Inc., Standard Fruit Company de Costa Rica, S.A., Standard Fruit Company de Honduras, S.A., Dole Fresh Fruit International, Limited, and Dole Fresh Fruit International, Inc. These subsidiaries are so integrated and controlled by Dole Fresh Fruit Company that they are the alter ego/agent of Dole Fresh Fruit Company.

15. Defendant Standard Fruit Company de Costa Rica, S.A. is a Costa Rican corporation with its principal place of business in Costa Rica, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court through its alter ego/agent corporations, including Standard Fruit Company, Standard Fruit and Steamship Company, Dole Food Company, Inc., and Dole Fresh Fruit Company.

16. Defendant S andard Fruit Company de Honduras, S.A. is a Honduran corporation with its principal place of business in Honduras, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court through its alter ego/agent corporations, including Standard Fruit Company, Standard Fruit and Steamship Company, Dole Food Company, Inc., and Dole Fresh Fruit Company.

17. Defendant Dole Fresh Fruit International, Limited is a Liberian corporation with its principal place of business in California, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court through its alter ego/agent corporations, including Standard Fruit Company, Standard Fruit and Steamship Company, Dole Food Company, Inc., and Dole Fresh Fruit Company.

18. Defendant Dole Fresh Fruit International, Inc. is a Panamanian corporation with its principal place of business in California, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court through its alter ego/agent corporations, including Standard Fruit Company, Standard Fruit and Steamship Company, Dole Food Company, Inc., and Dole Fresh Fruit Company.

19. Defendant Chiquita Brands International, Inc. is a New Jersey corporation with its principal place of business in Ohio, which, at all times pertinent herein, was authorized to do and

was doing business within the jurisdiction of this Honorable Court. Chiquita Brands International, Inc. is the ultimate parent of Chiquita Brands, Inc. and Maritrop Trading Corp. Chiquita Brands International, Inc. is the successor in interest to United Fruit Company and United Brands Company, Inc.

20. Defendant Chiquita Brands, Inc. is a Delaware corporation with its principal place of business in Ohio, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court. Chiquita Brands, Inc. is the alter ego/agent of Chiquita Brands International, Inc. and successor in interest to United Fruit Company and United Brands Company, Inc.

21. Defendant Maritrop Trading Corporation is a Delaware corporation with its principal place of business in Mississippi. Maritrop Trading Corporation is the subsidiary and alter ego/agent of Chiquita Brands, Inc. and Chiquita Brands International, Inc.

22. Fresh Del Monte N.V. is a Netherland Antilles corporation with its principal place of business in Hawaii. Fresh Del Monte N.V. is the ultimate parent corporation of the International Fruit empire that is operated by Fresh Del Monte N.V.'s alter ego subsidiaries, Del Monte Fresh Produce N.A. and Del Monte Fresh Produce Hawaii Inc.

23. Defendant Del Monte Fresh Produce, N.A. is a Florida corporation with its principal place of business in Florida, which, at all times pertinent herein, was authorized to do and was doing business within the jurisdiction of this Honorable Court.

24. Defendant Del Monte Fresh Produce Company is a Delaware corporation and the parent and alter ego/agent of its subsidiaries, including those doing business in Hawaii. The Del Monte Defendants are subject to personal jurisdiction in Hawaii based on their own contacts with the State, the contacts of their agents and alter ego/agents. Del Monte Fresh

Produce N.A. and the other agents, subsidiaries and alter ego/agents of Del Monte Fresh Produce Company are part of the international fruit empire operated at the behest of the Del Monte Fresh Produce Company. As such the Del Monte Defendants are subject to personal jurisdiction based on the contacts of the numerous subsidiaries, alter egos and agents doing business and performing tortious actions in Hawaii.

25. Defendant Del Monte Fresh Produce Hawaii Inc. is a Hawaii Citizen because its principal place of business is Hawaii. Del Monte Fresh Produce Hawaii is a subsidiary of Del Monte Produce N.A. and Del Monte Fresh Produce Company. Del Monte Fresh Produce Hawaii Inc., Del Monte Produce N.A. and Del Monte Fresh Produce Company are subsidiaries, alter egos/agents of each other and are subservient to the ultimate parent's, Fresh Del Monte N.V., interests in the international fruit business.

26. Del Monte Fresh Produce Hawaii Inc., Del Monte Fresh Produce N.A., Del Monte Fresh Produce Company and Fresh Del Monte N.V. (The "Del Monte Defendants") are a part of the international fruit empire that had its roots in selling pineapples grown on plantations in Hawaii. The Del Monte Defendants, along with the Dole Defendants formed the Pineapple Growers Association of Hawaii (PGAH), the trade association whose research arm, the Pineapple Research Institute, developed and tested DBCP in Hawaii. The Del Monte Defendants and the Dole defendants were, at the time in question, in control of the PGAH such that they are liable for the activities of the PGAH.

27. The Del Monte Defendants, the Dole Defendants and the Chiquita Defendants are foreign citizens as well as U.S. citizens because they are the alter egos of their respective foreign subsidiaries involved in their respective international fruit growing and sourcing enterprises.

28. Defendants Dow Chemical Company, Occidental Chemical Corporation, Shell Oil Company, Standard Fruit

Company, Standard Fruit and Steamship Company, Dole Food Company, Inc, Dole Fresh Fruit Company, Standard Fruit Company de Costa Rica, S.A., Standard Fruit Company de Honduras, S.A., Dole Fresh Fruit International, Limited, Dole Fresh Fruit International, Inc., Chiquita Brands, Inc., Chiquita Brands International, Inc., and Del Monte Fresh Produce, N.A., their subsidiaries and/or affiliates, manufactured, sold, distributed, and used nematocides containing the chemical dibromochloropropane, commonly known as DBCP. Plaintiffs do not assert any claims, do not seek any damages, and expressly disclaim any recovery for any injuries arising out of exposure to DBCP or products containing DBCP designed, manufactured, marketed, or supplied by Dead Sea Bromine Co., Ltd., Ameribrom Inc., Bromine Compounds, Ltd., Israel Chemical Co., Ltd., Dead Sea Works, Ltd., Makhteshim Azan, the State of Israel, or any other foreign sovereign entity.

29. No Plaintiff in this action claims exposure to DBCP manufactured, sold, distributed, supplied, or designed by Dead Sea Bromine, Co., Ltd., Ameribrom Inc., Bromine Compounds, Ltd., Israel Chemical Co., Ltd., Dead Sea Works, Ltd., Makhteshim Azan, the State of Israel (collectively "Dead Sea"), or any other foreign sovereign entity. Discovery in other DBCP cases has shown conclusively that no Dead Sea DBCP product was ever used by Defendants Chiquita Brands, Inc., Chiquita Brands International, Inc., or Maritrop Trading Company, or Del Monte Fresh Produce, N.A., Del Monte Fresh Produce Hawaii Inc., Del Monte Fresh Produce Company and Fresh Del Monte N.V., or their affiliates, and that no such product was used by Defendant Standard Fruit Company or its affiliates prior to 1975. Accordingly, any Plaintiff who did not work for Standard Fruit Company or its affiliates after 1975 has no possibility of exposure to any Dead Sea product. Any Plaintiff who worked for Standard Fruit Company or its affiliates specifically and affirmatively disclaims any right to recovery for such exposure.

30. John Does 1-10, Jane Does 1-10, Doe Partnerships 1-10, and Doe Corporations 1-10 ("Doe Defendants") are sued under fictitious names because their names and identities are presently unknown to the Plaintiffs, except that they are persons and/or entities who are in the same manner presently unknown to the Plaintiffs and who engaged in the activities alleged herein; and/or are in some manner responsible for the injuries and damages to the Plaintiffs; and/or are persons who conducted some activity in a negligent, and/or wilful manner who failed to fulfill a duty or obligation, whose conduct or omission to act was a proximate cause of the injuries or damages to the Plaintiffs; and/or were in some manner related to the previously named Defendants engaged in the activities alleged herein; and Plaintiffs ask to insert their true names and capacities, activities and/or responsibilities, whether individual or corporate, when their names are ascertained.

31. Plaintiffs, on information and belief, allege that Standard Fruit Company, Standard Fruit and Steamship Company, Standard Fruit Company de Costa Rica, S.A., Standard Fruit Company de Honduras, S.A., Dole Food Company, Inc., Dole Fresh Fruit Company, Dole Fresh Fruit International, Limited, Dole Fresh Fruit International, Inc., Chiquita Brands, Inc., Chiquita Brands International, Inc. (individually and as successor in interest to United Brands Company, Inc.), Maritrop Trading Corporation, Del Monte Fresh Produce Company, Del Monte Fresh Produce, N.A., Del Monte Fresh Produce Hawaii Inc., Del Monte Fresh Produce Company and Fresh Del Monte N.V. and the Pineapple Growers Association of Hawaii ("the Grower Defendants") performed many of the tortious acts described below through their predecessors and/or alter ego/agent corporations, both foreign and domestic.

32. Plaintiffs, on information and belief, allege that Amvac Chemical Corporation, Shell Oil Company, Dow Chemical Company, and Occidental Chemical Corporation ("the Manufacturer Defendants") performed many of the tortious

acts described below through their predecessors and/or alter ego/agent corporations, both foreign and domestic.

33. The Plaintiffs allege that they were exposed to Defendants' products between 1959 and the present, and as a result, have suffered serious and permanent injuries including, but not limited to, severe injury to their reproductive capacities. The Plaintiffs were diagnosed with injuries related to DBCP exposure less than 2 years prior to filing this Complaint (or a complaint in another jurisdiction tolling the statute of limitations), and did not discover and could not have discovered this injury and its cause prior to that time.

34. The Plaintiffs were employed by American fruit companies, their subsidiaries or agents in the Plaintiffs' native countries. The Plaintiffs were exposed to the Defendants' DBCP products while employed in the commercial cultivation of bananas for sale by American corporations in the United States.

35. The Plaintiffs claim damages (including compensatory damages, punitive damages and other damages, if any) that exceed the minimal jurisdictional amount required by this Court.

IMPROPER VENUE AND INSUFFICIENCY OF SERVICE OF PROCESS.

BACKGROUND

36. Defendants used DBCP from approximately the 1960's until the mid-1980's. Workers in the banana growing regions of Costa Rica, Ecuador, Guatemala, Panama and other countries injected DBCP into the soil to protect against microscopic worms called nematodes that dwell in cultivated soils. The laborers wore no gloves, protective covering, or respiratory equipment to prevent skin absorption or inhalation because no one informed them that they were in danger, and because typically no protective clothing was provided to the Plaintiffs and those similarly situated by the Defendants.

Unknown to the workers, however, each breath taken during the daily hours of mixing and injecting DBCP became a health hazard. The fumes released by the chemical remained trapped within the banana canopy created by the oversized banana leaves, which cut off almost all ventilation. Workers were also exposed through their skin when DBCP splashed on them in the course of refilling their canisters, or when their injectors hit rocks or other objects. Many workers absorbed so much DBCP each day that their urine would give off the smell of the chemical at night.

A. *Effects - Sterility*

37. The affected workers suffer from a type of sterility known as germinal cell aplasia. Simply put, their bodies produce little or no sperm. Men whose cells produce no sperm are termed azoospermic; men who produce fewer sperm than normal are oligospermic. Even a man with a normal count may have slow moving, deformed, or stunted sperm. In any case, such a man is extremely unlikely to father a healthy, normal child.

B. *Cancer*

38. The United States Environmental Protection Agency lists DBCP as a probable human carcinogen. The National Cancer Institute ("NCI") lists DBCP as one of the most potent known carcinogens. NCI tests demonstrate that DBCP induces cancer in a wide range of organs and sites, generally at the lowest doses tested. Studies of the exposed workers have demonstrated excess cancer rates.

C. *Birth Defects*

39. DBCP has been linked to a variety of birth defects, and is a suspected cause of miscarriages in exposed women. In Costa Rica and other countries, women working on plantations have reported several consecutive miscarriages.

D. *Environmental Harm*

40. Environmentally, DBCP is regarded as a highly persistent and mobile pesticide. DBCP decomposes slowly in soil with studies showing DBCP to remain in soils for years and it is able to migrate through certain soils. DBCP has been widely found as a contaminant in ground and surface water in Hawaii, elsewhere in the United States and abroad. It is highly chemically stable in water, even in very small amounts. It has also been reported as a low level air contaminate. In California, municipalities have recovered hundreds of millions of dollars from Dow Chemical Company, Shell Oil Company, Occidental Chemical Corporation and Amvac for costs related to the clean-up of DBCP contaminated water supplies. Recently, these Defendants paid large settlements to several communities for groundwater contamination from DBCP. Litigation has been filed on Maui against many of these same Defendants over contamination of drinking water wells containing DBCP over the maximum contaminant level ("MCL"). *See Board of Water Supply of the County of Maui v. Shell Oil Company. et al.,* Civil No. 97-00304DAE. The MCL for DBCP in drinking water is 2 parts per billion and the EPA's goal for water systems, because of DBCP's strong carcinogenic nature, is zero contamination.

E. *Testing For Hazards*

41. What little pre-market toxicology research was done on DBCP was conducted in or around 1958, by the Defendant Dow's company doctor, Dr. Ted Torkelson, and by Defendant Shell's consultant, Dr. Charles Hine of the University of California Medical School in San Francisco. In testing of DBCP on rats, both labs found DBCP caused retarded growth, organ damage, shrunken testes, and sterility.

In an April 1958 "confidential report," Dr. Hine wrote that "among the rats that died, the gross lesions were especially prominent in lungs, kidneys, and testes. Testes were usually extremely atrophied." Dow's first in-house report came three

months later, in July 1958, and concluded that DBCP was "readily absorbed through the skin and high in toxicity in inhalation." Dow's data also showed that "liver, lung and kidney effects might be expected" and that "testicular atrophy may result from prolonged, repeated exposure." This information, of course, should have stopped the development of DBCP before it was ever sold. Decades later, when American factory workers producing DBCP were found to be sterile and doctors in Costa Rica began to diagnose sterility in hundreds of plantation workers, the health officials would wonder why Dow and Shell would have sold a product knowing that "testicular atrophy may result from prolonged, repeated exposure." In fact, both companies had begun producing DBCP commercially even before the studies were completed.

In 1961, a joint Dow-Shell report on the hazardous effects of DBCP was published in *Toxicology and Applied Pharmacology*. Although this data was published in an academic journal, the information contained in the report never appeared in technical data sheets (the forerunners to today's material safety data sheets, or MSDSs), nor did it lead to adequate warnings of DBCP's hazards.

F. *USDA Registration: 1961*

42. Hine, by now working jointly for Dow and Shell, drafted a report in support of FDA registration in May of 1961 calling for work place concentrations of DBCP to be kept under one part per million ("ppm"), and recommending impermeable protective clothing if skin contact was likely. Louis Lykken, in charge of government registration of chemicals for Shell, commented that the suggestion was "impractical." To Hine's observation that repeated exposure could affect human reproduction, Lykken made the company's priorities clear: "Leave out speculation about possible harmful conditions to man. This is not a treatise on safe use."

G. *Product Labeling*

43. In 1961, a USDA registration official wrote Shell upon receipt of the company's proposed labels, stating that "in view of the testicular atrophy demonstrated to occur in experimental animals, we would like to have information regarding health records of those individuals who have been employed for an extended period in the manufacture or formulation of products containing DBCP." A flurry of memos ensued. The following excerpts from Shell documents demonstrate Shell's management's attitude:

> August 21, 1961: "We have discussed with Dr. Zavon USDA's precautionary labeling and the hazards associated with this pesticide chemical. He shares our opinion that USDA is being over cautious in their views on labeling products containing this pesticide chemical. It is the consensus that Dr. Zavon and a representative of Dow's toxicology group should meet with the USDA toxicology section representatives to settle this issue."
>
> August 29, 1961: "We have just received and reviewed the subject technical bulletin [and information brochure on Nemagon (Shell's flagship product)] and have some reservations with regard to the adequacy of the statements under safety precautions. In light of the fact that the threshold of odor detection has been reported at one point at seven parts per million and the lowest level studied [five parts per million] has demonstrated damage after repeated exposures, it appears the statement "there is a good margin of safety in handling" would be difficult to justify and might be prosecuted as negligent."
>
> November 9, 1961: "The pesticides regulations branch of the U. S. Department of Agriculture has expressed concern over the hazards associated with the use of Nemagon soil fumigant and proposed stringent labeling for the various formulations now being marketed. It is the consensus in the division office that the USDA is being overly cautious and

> the precautionary statements proposed could have an adverse affect on the sale of this product. This matter has been discussed with the USDA representatives and they are willing to relax their labeling requirements if we can provide them with a history of safe use experience in the field and in the manufacturing plant."

Dow was similarly cavalier when it considered the effects that warning about testicular atrophy might have on sales of DBCP. DBCP was entered in the toxicology card file in Dow's medical library. The toxicology card for Dow's flagship product, Fumazone, noted eye and skin affects, and stated that testicular damage "may result from chronic exposure to active material." Liver and kidney damage were also discussed, but *the toxicology cards were soon altered to delete information on testicular damage.* Dr. Torkelson would later make the excuse that "the cards addressed singular exposures, and you don't see testicular changes on single exposures. It was put on some of the cards because whoever wrote it knew about it and thought it was important enough to put it on there along with liver and kidney affects. When it was retested, the testes didn't show an affect from a single exposure, and a new card was made out."

H. *Central American Trial And Full Scale Use*

44. Just a few years later, DBCP trials began on the Standard Fruit Company's Central American plantations. William Liebhard, now a professor of agriculture at the University of California-Davis and then a young scientist with Standard Fruit in Honduras, recalled:

> In the DBCP trials, toxicological analyses were not undertaken on the potential affects of those chemicals on user's health or in the environment. . . . We did not consider such factors at all at that time frame. . . . While working, all of us never used any kind of safety equipment in those days.

All throughout Costa Rica, and at Standard Fruit plantations around the world, warehouse mixers, field applicators and irrigation tower workers had regular, heavy exposure to DBCP through vapor inhalation and skin absorption. Standard Fruit's production manual contained no warnings of the testicular affects of DBCP, and did not advise the use of safety gear and precautions. An official of the Instituto Nacional de Seguros has stated that none of the workers, captains or field managers knew about the hazards and the necessary precautions for handling DBCP. The labels on Fumazone certainly did not tell them, and workers throughout the world invariably state that no warning of the product's dangers was ever given.

In a March 3, 1978, memorandum regarding DBCP safe handling procedures, Dr. Jack Dement, the director of Castle & Cooke, Inc.'s worldwide pest control efforts, commented on Dow's suggestions that DBCP should not be applied unless the treated area is a safe distance away from worker housing and work areas or all people have been evacuated from those surrounding areas. Dr. Dement stated:

> *This is not operationally feasible and does not need to be implemented.* . . . I am fully aware that enforcement of all these safety precautions is well nigh impossible. It is important however that we make a best effort at least to the extent that we have this equipment available.

Dr. Dement's memo went on to indicate that *only personnel working at the DBCP pump, rather than applicators, should be provided respiratory devices for the protection against DBCP vapors.* Furthermore, the Manufacturing Defendants were aware that the Grower Defendants were not providing the recommended safety measures. Dr. Dement's memorandum demonstrates the level of concern that the Defendants had for the safety of the workers.

I. *Banning And Exportation*

45. In the United States, DBCP had by 1975 been termed a suspected carcinogen by the EPA. In July 1977, thirty-five of one hundred fourteen workers manufacturing DBCP at Occidental's California plant were found to be sterile. One month later, the EPA banned DBCP from all but a few uses in Hawaii. Even in Hawaii, use was permitted only under heavily restricted conditions with extensive protective equipment. Finally, in 1979, the EPA canceled the registration for DBCP for all uses. Unfortunately, the large scale use of DBCP on pineapple plantations in the islands has led to extensive groundwater contamination in Hawaii.

The U.S. ban on manufacturing of DBCP, however, did not prevent the Defendants from exporting DBCP. Dow, Shell and Occidental still had stocks to sell. When Dow informed Standard that it planned to halt sales and wait for EPA test results, Standard threatened to sue, complaining that "your halt of shipping our outstanding orders is viewed as a breach of contract." Dow relented after Standard agreed to indemnify it against claims for injuries resulting from DBCP use. Sales resumed with Dow officials rationalizing that profits could be made as long as someone else paid for the damage.

This controversy even became the focus of hearings in the United States Senate:

> [I]ndustry studies. . . were kept secret from domestic chemical company employees and from agricultural workers using DBCP in the field. Now, tragically, twenty years later, the sterilization that had been predicted by laboratory tests became a reality - increasing numbers of workers in the manufacturing plants and banana fields found they could not have children. EPA finally banned DBCP from nearly all domestic farm uses, but the companies then dumped their unused stocks overseas where it continued to be used. As a result, more banana workers in

> Costa Rica were sterilized. The tale of DBCP is an appalling one.

Senator J. Leahy, Circle of Poison: Impact of U. S. Pesticides on Third World Workers, Hearings before the Committee on Agriculture, Nutrition, and Forestry, 102 Cong., First Sess. 1 (June 5, 1991). When available stocks of DBCP began to be exhausted, Castle and Cooke, Inc. (now known as Dole Foods, Inc.) entered into negotiations with Dow to arrange for Dow to set up a DBCP plant to be run by Castle & Cooke, Inc. outside the United States. Thus, despite all the known hazards of DBCP and the damage done to those workers occupationally exposed to DBCP, Castle & Cooke, Inc. continued to look for a way to circumvent the health related ban on production of DBCP in the United States.

V. CLASS ACTION ALLEGATIONS

46. The named Plaintiffs bring this action as a class action under Fed.R.Civ.P. 23(a) and 23(b)(3) on behalf of themselves and others similarly situated who have been exposed to and injured by the chemical pesticide, dibromochloropropane.[1]

47. Plaintiffs are members of the class they seek to represent.

48. The members of the class are so numerous that joinder is impracticable and would involve thousands of litigants.

---

[1] Plaintiffs have filed a Motion to Remand this case. Plaintiffs file this amended complaint subject to, and without waiving, their Motion to Remand. This Court does not have jurisdiction. However, because Plaintiffs' case has been removed, they file this amended complaint to correct errors in the original complaint and clarify certain allegations. For purposes of this Court's consideration, the Plaintiffs have changed the class action allegations to conform to the Federal Rules of Civil Procedure. Upon remand, the Plaintiffs will move for a similar amendment of the complaint, but under the Hawaii Rules of Civil Procedure. Plaintiffs' filing of this amended complaint in no way constitutes a waiver of their Motion to Remand.

49. There are questions of law and fact common to the class including, but not limited to:

a. Whether Defendants designed, manufactured, marketed, sold, and/or distributed a defective product;

b. Whether exposure to DBCP causes injury;

c. Whether Defendants are strictly liable for sale of a defective product;

d. Whether Defendants acted negligently in manufacturing, formulating, marketing, distributing, instructing in the use of, supervising the use of, and promoting, selling and using DBCP;

e. Whether Defendants conducted, either directly or indirectly, appropriate testing of the DBCP;

f. Whether the Defendants' conduct amounted to a conspiracy that injured the Plaintiffs;

g. Whether Defendants failed to adequately warn of the adverse effects of DBCP as compared to other nematocides and methods of controlling nematodes;

h. Whether Plaintiffs will need future medical treatment;

i. Whether Defendants are liable for punitive damages; and

j. Whether the Defendants conspired to injure the Plaintiffs.

50. The claims of the named Plaintiffs are typical of the claims of the class in that the named Plaintiffs and the members of the class used DBCP designed, manufactured, supplied, distributed, sold and/or placed in the stream of commerce by Defendants, and did suffer or may suffer harm as a result.

51. Plaintiffs will fairly and adequately represent and protect the interests of the members of the class. Plaintiffs have retained counsel competent and experienced in complex class actions and products liability litigation.

52. Class certification is appropriate under Fed.R.Civ.P. Rule 23(b)(3) because common issues of law and fact relative to the design, manufacture, testing, warning, marketing, and use of DBCP, and the onset of injury from such use of DBCP predominate over individual issues. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all members of the class is impracticable.

53. Class certification is also appropriate pursuant to Fed. R.Civ.P.23(b)(1) because prosecution of separate actions would create a risk of adjudications with respect to individual members of the class which may, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

VI. FOR A FIRST CAUSE OF ACTION - NEGLIGENCE

54. All relevant allegations and facts set forth in the preceding paragraphs are realleged and incorporated by reference herein where applicable.

55. Defendants had a duty to exercise reasonable care in the manufacture, sale, distribution, use, and/or placement of DBCP into the stream of commerce, including a duty to assure that the product did not cause exposed workers to suffer from unreasonable, dangerous adverse health effects. Defendants failed to exercise ordinary care in the manufacture, sale, testing, quality assurance, quality control, use, and/or distribution of DBCP into the stream of commerce in that Defendants knew or should have known that the product DBCP created a

high risk of unreasonable, dangerous adverse health effects, some of which are life threatening.

56. The illnesses and disabilities of the Plaintiffs are a direct and proximate result of the negligence of the above-named Defendants, in that these Defendants produced, sold, or otherwise placed DBCP-containing materials into the stream of commerce, causing the Plaintiffs' exposure to the DBCP which the Defendants knew, or in the exercise of ordinary care ought to have known, would be deleterious and harmful to the Plaintiffs' health and well-being. The named Defendants were negligent and/or grossly negligent in one, some or all of the following respects, among others, which were the proximate cause of the Plaintiffs' illnesses and disabilities:

k. in shipping DBCP or DBCP-containing products to Plaintiffs' country of residence from ports in the United States including ports in Hawaii, when Defendants knew or reasonably should have known that the Plaintiffs would use the shipments of DBCP and that such use was substantially certain to cause the injuries of which Plaintiffs now complain;

l. in failing to adequately warn the Plaintiffs and the public of the dangerous characteristics of DBCP and the hazards of exposure to it, or to cause their subsidiaries or affiliates to do so;

m. in failing to provide the Plaintiffs with information as to what would be reasonably safe protective clothing and proper protective equipment and apparatuses, if in truth there were any, to protect the Plaintiffs from harm and disability from exposure to DBCP, or to cause their subsidiaries or affiliates to do so;

n. in failing to place adequate warnings in the Plaintiffs' native language on the containers of DBCP-containing materials to warn of the health hazards of coming into contact with DBCP, or cause their subsidiaries or affiliates to do so;

o. in failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce a safety plan for a safe method of handling and applying DBCP, or to cause their subsidiaries or affiliates to do so;

p. in failing to adequately supervise and instruct the Plaintiffs in the safe and proper application of DBCP-containing products, or to cause their subsidiaries or affiliates to do so;

q. in failing to implement proper methods and techniques of application of the products, or to cause such implementation, or to cause their subsidiaries or affiliates to do so;

r. in failing to instruct the Plaintiffs in and enforce the wearing of adequate protective clothing and equipment during application of the products or to cause such enforcement, or to cause their subsidiaries or affiliates to do so;

s. in failing to utilize a substitute material for DBCP in the nematocide, or to cause their subsidiaries or affiliates to do so;

t. in failing to test DBCP prior to releasing these products for sale to determine safe methods of handling or to cause their subsidiaries or affiliates to do so;

u. in failing to reveal the results of tests conducted on DBCP to the Plaintiffs, public health and safety officials or the public, or to cause their subsidiaries and/or affiliates to do so, and in concealing from the Plaintiffs information concerning the observed effects of the products on the Plaintiffs and their co-workers;

v. in failing to adequately monitor the health of the Plaintiffs and their co-workers exposed to the products;

w. in failing to use due care in designing and manufacturing DBCP so as to avoid the aforementioned risks

to individuals when DBCP was being used for nematode control;

x. in failing to conduct adequate pre-market and laboratory testing and post-marketing surveillance to determine the safety of DBCP;

y. in failing to provide adequate training to fruit company medical care providers so that health care providers were aware of the health dangers posed to the workers exposed to DBCP;

z. in marketing, supplying and using DBCP—which it knew to have serious, dangerous side effects and which effects it knew or should have known to be permanent—despite the side effects and in failing to adequately test for carcinogenic, mutagenic and teratogenic potential or other adverse health effects, such conduct amounting to negligence, to gross negligence, indifference and callous disregard of public health, and wilful and wanton conduct, so as to expose Defendants to the payment of punitive damages; and

aa. were otherwise careless or negligent.

57. The Plaintiffs further allege that Defendants and their agents, subsidiaries and/or predecessors are liable to the Plaintiffs individually and on the alternative liability theory, "alter ego", and/or successor liability theories. The Plaintiffs allege that the agents, employees, managers, officers, superintendents and/or servants of these Defendants carried out the acts and omissions described herein in the course of their employment for these and other named Defendants in the furtherance of a common corporate course or purpose.

58. The Plaintiffs assert negligence claims against only those Defendants named in this Complaint. The Plaintiffs do not assert any negligence claims because of exposure to DBCP or DBCP-containing products, designed, manufactured, formulated, marketed, distributed, or used by Dead Sea Bromine Co., LTD., Bromine Compounds, LTD., Ameribrom,

Inc., Israel Chemical Co., LTD., Dead Sea Works, LTD., the State of Israel, or any entity owned by the State of Israel or any entity owned or controlled, all or in part, by any foreign sovereign.

VII. FOR A SECOND CAUSE OF ACTION - CONSPIRACY

59. Plaintiffs allege all relevant allegations in the preceding paragraphs and incorporate them by reference herein where applicable.

60. Plaintiffs further allege that the named Defendants and/or their predecessors in interest, their subsidiaries and/or affiliates, knowingly agreed, contrived, combined, confederated and conspired among themselves and with others to cause the Plaintiffs' injuries, illnesses, and diseases by exposing the Plaintiffs to harmful and dangerous DBCP-containing products and to deprive the Plaintiffs of the opportunity of informed free choice as to whether to use the DBCP-containing products and to expose themselves to the dangers. Defendants committed the above-described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to Defendants' DBCP-containing products. Each of the Defendants aided and abetted the other Defendants in committing the tortious acts that caused the Plaintiffs' injuries.

61. In furtherance of these conspiracies, Defendants performed the following overt acts, among others:

bb. For many years, Defendants, individually, jointly and in conspiracy with each other, possessed medical and scientific data, and test reports which clearly indicated that DBCP-containing products were unreasonably dangerous, hazardous, deleterious, carcinogenic, mutagenic, teratogenic and potentially deadly;

cc. despite medical and scientific data, literature and test reports possessed by or available to Defendants,

Defendants individually, jointly and in conspiracy with each other, fraudulently, willfully and maliciously:

(1) withheld, concealed and suppressed the medical and scientific data, literature and test reports regarding the risks of DBCP-containing products from the workers who were exposed to them and using them, the public, and the agricultural community;

(2) caused to be released, published, and disseminated medical and scientific data, literature, and test reports containing information and statements regarding the risks of DBCP-containing products which Defendants knew were incorrect, incomplete, outdated, and misleading;

(3) distorted the results of medical examinations conducted upon the Plaintiffs, or workers such as the Plaintiffs, who were using DBCP-containing products and being exposed to the products by falsely stating and/or concealing the nature and extent of the harm which the Plaintiffs, or workers such as the Plaintiffs, had suffered.

dd. by the false and fraudulent representations, omissions, and concealments set forth above, the named Defendants individually, jointly, and in conspiracy with each other, intended to induce the Plaintiffs to rely upon the false and fraudulent representations, omissions, and concealments and to continue to expose themselves to the dangers inherent in the use of and exposure to Defendants' DBCP-containing products.

62. The Plaintiffs and others, reasonably and in good faith, relied upon the false and fraudulent representations, omissions, and concealments made by the Defendants regarding the nature of the DBCP-containing products.

63. As a direct and proximate result of the Plaintiffs' and others' reliance on the Defendants' false and fraudulent representations, omissions, and concealments, the Plaintiffs have sustained damages and injuries as described herein.

64. The Plaintiffs assert conspiracy claims against only those Defendants named in this Complaint. The Plaintiffs do not assert any conspiracy claims because of exposure to DBCP or DBCP-containing products, designed, manufactured, formulated, marketed, distributed or used by Dead Sea Bromine, Co., LTD., Bromine Compounds, LTD., Ameribrom, Inc., Israel Chemical Co., LTD., Dead Sea Works, LTD., the State of Israel, or any entity owned by the State of Israel or any other foreign sovereigns.

VIII. FOR A THIRD CAUSE OF ACTION - STRICT LIABILITY

65. Plaintiffs reallege all relevant allegations in the preceding paragraphs and incorporate them by reference herein where applicable.

66. Defendants are manufacturers and/or suppliers of DBCP. The DBCP manufactured and/or supplied by Defendants was defective in design or formulation in that, when it left the hands of the manufacturer and/or suppliers, the foreseeable risks exceeded the benefits associated with the design or formulation.

67. Alternatively, the DBCP manufactured and/or supplied by Defendants was defective in design or formulation, in that, when it left the hands of the manufacturer and/or suppliers, it was unreasonably dangerous because it was more dangerous than an ordinary consumer would expect, unreasonably dangerous and more dangerous than other alternatives.

68. The DBCP-containing products that were used in proximity to and applied by the Plaintiffs were designed, manufactured, formulated, and/or distributed by named Defendants and subsequently sold, directly and indirectly to the Plaintiffs or to Plaintiffs' employers. The products left the possession and control of Defendants in a defective and unreasonably dangerous condition in the following respects:

ee. the DBCP-containing products did not contain an adequate and timely warning in the Plaintiffs' language regarding the serious health hazards associated with DBCP;

ff. the products did not contain an adequate and timely warning concerning safety precautions and the need for protective equipment when working with DBCP;

gg. the products were defectively designed in that they contained DBCP, although a substitute for this chemical was available at all times material to this litigation;

hh. the DBCP products were unreasonably dangerous per se;

ii. the substance of the warning on the approved labels was inadequate because the approval of the labels was based on false, fraudulent and misleading information supplied to the regulatory agencies responsible for approving the labels; and

jj. the DBCP manufactured and/or supplied by Defendants was defective due to inadequate post-marketing warning or instruction because, after the manufacturer knew or should have known of the risk of injury from DBCP, it failed to provide adequate warnings to users or consumers of the product and continued to promote the product.

69. As the proximate cause and legal result of the defective condition of DBCP as manufactured and/or supplied by Defendants, and as a direct and legal result of the negligence, gross negligence, recklessness, carelessness, other wrongdoing and/or action(s) of Defendants described herein:

kk. Plaintiffs have been injured in health, strength and activity and suffered injuries to body and mind. All of these injuries have caused Plaintiffs past, present and future injuries and damages. The Plaintiffs have suffered shrunken testicles, eye damage, physical impairment, anxiety, distress, fear, pain, suffering, mental anguish, and distress secondary to the injury

and damages; Plaintiffs have suffered other injuries, the exact nature and extent of which are not fully known at this time;

ll. Plaintiffs have sustained and will continue to sustain economic loss, including loss of earnings and diminution or loss of earning capacity, the exact amount of which is presently unknown;

mm. Plaintiffs require reasonable and necessary health care, attention and services and have incurred medical, health, incidental and related expenses. Plaintiffs are informed and believe and, therefore, allege they will in the future be required to obtain medical and/or hospital care, attention, and services in amounts that are as yet undetermined.

70. The named Defendants are and were engaged in the business of manufacturing and/or distributing such DBCP-containing products, and these products, without substantial change in their condition after they were sold, were a proximate cause of the injuries and damages sustained by the Plaintiffs.

71. The Plaintiffs were unaware of the dangerous properties of DBCP which rendered the DBCP-containing products unsafe for their intended use. The Plaintiffs used the DBCP-containing products in a manner that was reasonably anticipated by the Defendants. Further, during the periods that the Plaintiffs were exposed to the products of the named Defendants, the products were being utilized in a manner which was intended by the Defendants.

72. The Plaintiffs assert strict liability claims against only those Defendants named in this Complaint. Plaintiffs do not assert any strict liability claims because of exposure to DBCP or DBCP-containing products designed, manufactured, formulated, marketed, distributed or used by Dead Sea Bromine Co., LTD., Bromine Compounds, LTD., Ameribrom, Inc., Israel Chemical Co., LTD., Dead Sea Works, LTD., the State of Israel, or any entity owned by the State of Israel.

IX. FOR A FOURTH CAUSE OF ACTION - INTENTIONAL TORT

73. Plaintiffs reallege all relevant allegations in the preceding paragraphs and incorporate them by reference herein where applicable.

74. The injuries and damages of the Plaintiffs are also due to the intentional malfeasance of Defendants and/or their subsidiaries and/or affiliates and are the direct and proximate result of these Defendants' volitional acts. Each of these Defendants knew of the dangers caused by the DBCP-containing products, yet knowingly, consciously and with substantial certainty of the consequences of their actions proximately caused the Plaintiffs' injuries in the following respects:.

nn. Defendants knowingly concealed information concerning the observed health effects of DBCP or DBCP-containing products from the Plaintiffs, the United States and foreign governments, and the medical, scientific and agricultural communities;

oo. Defendants knew of the hazards posed by DBCP-containing products, yet, they intentionally exposed Plaintiffs to DBCP products in operations involving the Plaintiffs and/or sold and distributed those DBCP products for use involving the Plaintiffs;

pp. Defendants knew of the hazards to the Plaintiffs posed by DBCP-containing products and by the methods of application utilized, yet, they continued to use these methods and/or allow others to continue to use these methods;

qq. Defendants knew of the hazards to the Plaintiffs posed by DBCP-containing products, yet, they failed to provide adequate protective clothing and equipment to the Plaintiffs and/or to take steps to ensure the Plaintiffs were provided adequate protection;

rr. Defendants knew of the hazards to the Plaintiffs posed by DBCP-containing products, yet, they did not instruct consumers of the product, including the Plaintiffs, in proper application techniques; and

ss. Defendants continued to sell, purchase and use DBCP-containing products after their use was suspended or banned by the United States government and, therefore, after Defendants were indisputably on notice of DBCP's dangerous properties.

75. The Plaintiffs further allege that Defendants are liable to the Plaintiffs for continuing harm resulting from the following volitional acts of these Defendants:

tt. knowingly concealing from the Plaintiffs knowledge of the existence, nature and severity of their injuries; and

uu. knowingly failing to take steps to enable, alert or cause the Plaintiffs to seek medical treatment for their injuries.

76. The Plaintiffs do not assert any intentional tort claims because of exposure to DBCP or DBCP-containing products designed, manufactured, formulated, marketed, distributed, or used by Dead Sea Bromine Co., LTD., Bromine Compounds, LTD., Ameribrom, Inc., Israel Chemical Co., LTD., Dead Sea Works, LTD., the State of Israel, or any entity owned by the State of Israel or other foreign sovereign entity.

X. FOR A FIFTH CAUSE OF ACTION - BREACH OF IMPLIED WARRANTY

77. Plaintiffs reallege all relevant allegations in the preceding paragraphs and incorporate them by reference herein where applicable.

78. The Defendants impliedly warranted that their DBCP-containing products were of good and merchantable quality and fit for their intended use. The Plaintiffs would show that they worked in close proximity to the DBCP-containing

products of the Defendants and the Defendants knew or ought to have reasonably anticipated these working conditions. The Defendants breached their implied warranty that their DBCP products were of good and merchantable quality and were fit for their particular intended use by causing the Plaintiffs' exposure to DBCP which was a proximate and producing cause of their injuries.

79. The Plaintiffs do not assert any breach of warranty claims because of exposure to DBCP or DBCP-containing products designed, manufactured, formulated, marketed, distributed, or used by Dead Sea Bromine Co., LTD., Bromine Compounds, LTD., Ameribrom, Inc., Israel Chemical Co., LTD., Dead Sea Works, LTD., the State of Israel, or any entity owned by the State of Israel or other foreign sovereign entity.

XI. COMPENSATORY DAMAGES

80. As a direct and proximate result of Defendants tortious conduct, the Plaintiffs have been rendered sterile, infertile, developed sexual and reproductive abnormalities, and/or are subject to an increased risk of cancer and other related conditions and have been damaged in some or all of the following particulars for which they have brought suit;

vv. The Plaintiffs have suffered great physical pain and suffering, mental anguish and emotional distress, and will continue to suffer great pain of body and mind throughout their lives;

ww. because of the Plaintiffs' exposure to DBCP-containing products, the Plaintiffs have suffered an extraordinarily increased risk of developing serious illness, including leukemia, or cancer of the testes, kidneys, liver and gastrointestinal tract. To detect the early onset of such diseases, the Plaintiffs will incur substantial expenses for medical testing, evaluation, examination, and other related expenses. These expenses would have been unnecessary if the Plaintiffs had not been wrongfully exposed to DBCP-

containing products. The Plaintiffs' need for liquidated damages for the costs of future medical expenses is reasonable in light of the following:

(1) the Plaintiffs have suffered significant exposure to Defendants' DBCP-containing products;

(2) DBCP-containing products are so toxic and hazardous to human health that the U.S. government has banned their use;

(3) diseases caused by DBCP-containing products are serious and often fatal;

(4) Plaintiffs have a significantly increased risk for developing such diseases; and

(5) early detection and diagnosis of diseases caused by DBCP-containing products will improve the prospects for cure, treatment, and minimization of pain and disability;

xx. the Plaintiffs have suffered an extraordinarily increased risk of genetic damage as a result of their exposure to Defendants' DBCP-containing products;

yy. the Plaintiffs have suffered and will suffer a loss of earning capacity;

zz. the Plaintiffs have lost capacity to enjoy life and will continue to suffer such loss in the future due to their exposure to Defendants' products.

81. The Plaintiffs assert claims against only those Defendants named in this Complaint. The Plaintiffs do not assert any claims for compensatory damages because of exposure to DBCP or DBCP-containing products designed, manufactured, formulated, marketed, distributed, or used by Dead Sea Bromine Co., LTD., Bromine Compounds, LTD., Ameribrom, Inc., Israel Chemical Co., LTD., Dead Sea

Works, LTD., the State of Israel, or any entity owned by the State of Israel.

82. The Plaintiffs claim damages (including compensatory damages, punitive damages and other damages, if any) that exceed the minimal jurisdictional amount required by this Court.

XII. PUNITIVE DAMAGES

83. Plaintiffs reallege all relevant allegations contained in the previous paragraphs and incorporate them by reference herein where applicable.

84. As a direct and proximate result of all the Defendants' breach of duties to the Plaintiffs or the Plaintiffs' decedents as delineated above, the Plaintiffs have sustained the DBCP related injuries, diseases, illnesses and/or conditions set forth above, along with pain and suffering, the undergoing of medical treatment and continued need for medical treatment, medical expenses, past, present, and future disability, impairment of wage earning capacity, lost wages and diminution of quality and enjoyment of life, including the mental anguish, fear, and emotional distress associated with the knowing there is no cure for these diseases or illnesses. The Plaintiffs have also suffered substantial damages in the form of mental anguish, emotional distress, humiliation and social ostracism because they are unable to have a family in accordance with the cultural norms of their society.

85. The Plaintiffs will show that the damages incurred were directly and proximately caused by the reckless and grossly negligent acts and omissions, conscious indifference and other disregard for the health and welfare of the Plaintiffs on the part of the named Defendants, their agents, servants, employees, managers, superintendents, supervisors and officers in that they ignored and concealed evidence available to them which demonstrated that DBCP and DBCP-containing materials were harmful and deadly to persons coming in

contact with such materials. The acts and omissions described above were committed by Defendants maliciously, intentionally, and with flagrant disregard for the rights of the Plaintiffs and others, and with the actual awareness on the part of the Defendants that the acts and omissions would, with reasonable probability, result in great bodily harm to the Plaintiffs. Consequently, users of DBCP-containing products, such as the Plaintiffs, were deprived of the opportunity of free choice as to whether or not to expose themselves to DBCP-containing products manufactured, formulated and used by the named Defendants. The Plaintiffs will show that as a result of the aforesaid conduct, they should be awarded an amount that would punish the Defendants and act as a deterrent to Defendants for the commission of similar wrongs.

86. The Plaintiffs do not assert any claims for exemplary damages because of exposure to DBCP or DBCP-containing products designed, manufactured, formulated, marketed, distributed, or used by Dead Sea Bromine Co., LTD., Bromine Compounds, LTD., Ameribrom, Inc., Israel Chemical Co., LTD., Dead Sea Works, LTD., the State of Israel, or any entity owned by the State of Israel.

87. The Plaintiffs claim damages (including compensatory damages, punitive damages and other damages, if any) that exceed the minimal jurisdictional amount required by this Court.

PRAYER

WHEREFORE, the representative Plaintiffs and the class members demand judgment against the Defendants, and each of them, jointly and severally, for general and special damages and for exemplary damages, for their costs expended, for interest on the judgment from the date rendered until paid, at the legal rate, for pre-judgment interest, and for other such other and further relief both at law and at equity, to which the Plaintiffs may show themselves justly entitled.

The Plaintiffs and the class members pray for relief as follows:

1. That this action be certified as a class action on behalf of the proposed Plaintiff class and that Plaintiffs be designated as representatives of the Class and Plaintiffs' counsel be designated as class counsel;

2. For general damages in a sum in excess of the jurisdictional minimum of this Court;

3. Medical, incidental, hospital, and service expenses according to proof;

4. Loss of earnings and earning capacity;

5. Liquidated damages to compensate for the costs of future medical expenses according to proof;

6. Prejudgment and post judgment interest as provided by law;

7. Compensatory damages in excess of the jurisdictional minimum of the Court, according to proof;

8. Consequential damages in excess of the jurisdictional minimum of the Court, according to proof;

9. Punitive and exemplary damages;

10. Attorneys' fees, expenses, and costs of this action; and

11. Such further relief as this Court deems necessary, just, and proper.

DATED: Charleston, South Carolina, March 2, 1998.

NESS, MOTLEY, LOADHOLT,
RICHARDSON & POOLE

By: /s/
Christian Hartley, Esq.
151 Meeting Street,

Suite 600
P.O. Box 1137
Charleston, SC 29402
(803) 720-9000

Diane D. Hastert, Esq.
James C. McWhinnie, Esq.
Damon Key Leong
Kupchak Hastert
1001 Bishop Street
1600 Pauahi Tower
Honolulu, Hawaii 96813
(808) 531-8031

James Krueger, Esq.
2065 Main Street
Post Office Box 1460
Wailuku, Maui, Hawaii 96793
(808) 244-7444 (Maui)
(808) 536-7474 (Honolulu)

ATTORNEYS FOR
PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERARDO DENNIS PATRICKSON; RODOLFO BERMUDEZ ARIAS; BENIGNO TORRES HERNANDEZ; FERNANDO JIMENEZ ARIAS; MELGAR OLIMPIO MORENO; SANTOS LEANDROS; HERMAN ROMERO AGUILAR; ELIAS ESPINOZA MERELO HOOKER ERA ELASTINO; ALIRIO MANUEL MENDEZ; and CARLOS HUMBERTO RIVERA, Individually and on behalf of others similarly situated,	CIVIL NO. 97-01516 HG (Class Action)
Plaintiffs,	
vs.	
DOLE FOOD COMPANY INC.; DOLE FRESH FRUIT COMPANY; DOLE FRESH FRUIT INTERNATIONAL LIMITED; DOLE FRESH FRUIT INTERNATIONAL, INC.; PINEAPPLE GROWERS ASSOCIATION OF HAWAII; AMVAC CHEMICAL CORPORATION; SHELL	THIRD-PARTY DEFENDANTS DEAD SEA BROMINE CO., LTD. AND BROMINE COMPOUNDS LIMITED'S ANSWER TO DOLE FOOD COMPANY, INC.'S THIRD-PARTY COMPLAINT DATED OCTOBER 31, 1997

OIL COMPANY; DOW)
CHEMICAL COMPANY;)
OCCIDENTAL CHEMICAL)
CORPORATION)
(Individually and as)
successor to Occidental)
Chemical Company and)
Occidental Chemical)
Agricultural Products, Inc.,)
Hooker Chemical and)
Plastics, Occidental)
Chemical Company of Texas)
and Best Fertilizer Company);)
STANDARD FRUIT)
COMPANY; STANDARD)
FRUIT AND STEAMSHIP)
COMPANY; STANDARD)
FRUIT COMPANY DE)
COSTA RICA, STANDARD)
FRUIT COMPANY DE)
HONDURAS, S.A.;)
CHIQUITA BRANDS, INC.;)
CHIQUITA BRANDS)
INTERNATIONAL, INC.)
(Individually and as)
successor in interest to)
United Brands Company,)
Inc.); MARITROP)
TRADING CORPORATION;)
DEL MONTE FRESH)
PRODUCE, N.A.; DEL)
MONTE FRESH)
PRODUCE COMPANY;)
John Does 1-10; Jane Does)
1-10; Doe Partnerships 1-10;)
and Doe Corporations)
1-10,)

Defendants.

DOLE FOOD COMPANY, INC.,

Defendant/Third-Party Plaintiff,

vs.

DEAD SEA BROMINE CO., LTD., and BROMINE COMPOUNDS LIMITED,

Third-Party Defendants.

THIRD-PARTY DEFENDANTS DEAD SEA BROMINE CO., LTD. AND BROMINE COMPOUNDS LIMITED'S ANSWER TO DOLE FOOD COMPANY, INC.'S THIRD-PARTY COMPLAINT DATED OCTOBER 31, 1997

Third-Party Defendants Dead Sea Bromine Co., Ltd. ("Dead Sea") and Bromine Compounds Limited ("Bromine Compounds"), by and through their attorneys, Lyons, Brandt, Cook & Hiramatsu, hereby state their Answer to Dole Food Company, Inc.'s Third-Party Complaint dated October 31, 1997 (the "Third-Party Complaint") as follows:

1. Dead Sea is a foreign corporation incorporated in the State of Israel a majority of whose shares or other ownership interest was owned by a foreign state during all times relevant to this lawsuit. Dead Sea is an agency or instrumentality of the State of Israel under the Foreign Sovereign Immunities Act ("FSIA"). It is specifically denied that Dead Sea "may be

served with citation as provided by the FSIA". Dead Sea is not subject to the process of the federal or state courts of Hawaii.

2. Bromine Compounds is a foreign corporation incorporated in the State of Israel a majority of whose shares or other ownership interest was owned by a foreign state during all times relevant to this lawsuit. Bromine Compounds is an agency or instrumentality of the State of Israel under the FSIA. It is specifically denied that Bromine Compounds "may be served with citation as provided by the FSIA". Bromine Compounds is not subject to the process of the federal or state courts of Hawaii.

3. The allegations contained in Paragraphs 3, 4, 5 and 6 of the Third-Party Complaint are denied.

FIRST DEFENSE

4. The Plaintiffs do not assert any claims, do not seek any damages, and expressly disclaim any recovery for any injuries arising out of exposure to DBCP or products containing DBCP designed, manufactured, marketed, or supplied by Dead Sea, Bromine Compounds, Ameribrom Inc., Israel Chemical Co., Ltd., Dead Sea Works, Ltd., Makhteshim Agan, or the State of Israel. Consequently, the Third-Party Plaintiff lacks standing because it has not alleged and cannot allege any "injury in fact" as a result of any DBCP manufactured, sold, or distributed by Dead Sea or Bromine compounds.

SECOND DEFENSE

5. Dead Sea and Bromine Compounds are not subject to the personal jurisdiction of the federal or state courts of Hawaii. Dead Sea and Bromine Compounds lack the requisite "minimum contacts" with either forum. The assertion of personal jurisdiction over Dead Sea and Bromine Compounds does not comport with traditional notions of fair play and substantial justice.

THIRD DEFENSE

6. Dead Sea and Bromine Compounds assert the defenses of insufficiency of process and insufficiency of service of process.

FOURTH DEFENSE

7. Dead Sea and Bromine Compounds are immune to suit under the doctrine of sovereign immunity.

FIFTH DEFENSE

8. The case should be dismissed on the ground of improper venue.

SIXTH DEFENSE

9. The case should be dismissed on the ground of forum non conveniens.

SEVENTH DEFENSE

10. The Third-Party Complaint fails to state a constitutionally substantial claim.

EIGHT DEFENSE

11. The Third-Party Complaint and each alleged cause of action therein, is prematurely brought and is not yet ripe for adjudication, in that the Third-Party Complaint, and each alleged cause of action therein, fails to allege that the Third-Party plaintiff has sustained or will soon sustain any legally cognizable injury or damage or any injury or damage whatsoever as a result of any DBCP manufactured, sold, or distributed by Dead Sea or Bromine Compounds.

NINTH DEFENSE

12. The Third-Party Complaint fails to state a claim upon which relief can be granted.

TENTH DEFENSE

13. The Plaintiffs do not assert any claims, do not seek any damages, and expressly disclaim any recovery for any injuries arising out of exposure to DBCP or products containing DBCP designed, manufactured, marketed, or supplied by Dead Sea, Bromine Compounds, Ameribrom Inc., Israel Chemical Co., Ltd., Dead Sea Works, Ltd., Makhteshim Agan, or the State of Israel. Accordingly, the Third-Party plaintiff is not entitled to any damages or other relief from either Dead Sea or Bromine Compounds, as no claims for contribution or indemnity can exist.

ELEVENTH DEFENSE

14. The Plaintiffs and Third-Party Plaintiff assumed the risk of any alleged injury or damage.

TWELFTH DEFENSE

15. The Plaintiffs and Third-party Plaintiff failed to mitigate their losses, damages and/or liability.

THIRTEENTH DEFENSE

16. Any injuries, damages, or liability sustained by Plaintiffs or the Third-Party Plaintiff were caused by their own lack of due care and fault, by pre-existing conditions, and/or by the lack of due care or fault of others for whom Dead Sea and Bromine Compounds have no responsibility or control. If the Plaintiffs are found to have suffered injuries or damages alleged, which is specifically denied, then said injuries and damages were caused by the fault, negligence, last clear chance, assumption of risk and/or inattention of the Plaintiffs and/or negligence and/or strict liability of others for whom or for which Dead Sea and Bromine Compounds may not be held responsible.

FOURTEENTH DEFENSE

17. Any injuries, damages or liability sustained by Plaintiffs or the Third-Party Plaintiff were caused by intervening or superseding events, factors, occurrences, or conditions that were not caused by Dead Sea or Bromine Compounds and for which Dead Sea and Bromine Compounds are not liable.

FIFTEENTH DEFENSE

18. The Plaintiffs and the Third-Party Plaintiff were contributorily or comparatively negligent.

SIXTEENTH DEFENSE

19. Any claim against Dead Sea or Bromine Compounds with respect to the recovery of exemplary or punitive damages would violate the due process, takings, excessive fines, and equal protection clauses of the United States Constitution and the Constitution of the State of Hawaii to the extent that such damages: (1) are not required to be established by clear and convincing evidence and/or some other appropriate heightened standard of proof; (2) are awarded by a jury which is not provided with adequate standards for their determination; (3) are awarded by a jury which is not prohibited from determining such damages on the basis of discriminatory characteristics; (4) are awarded on the basis of actions or inactions of persons other than Dead Sea or Bromine Compounds; (5) are awarded as a result of exposure to DBCP that neither Dead Sea nor Bromine Compounds manufactured, sold or distributed; (6) are awarded without a bifurcated trial proceeding where evidence relating to punitive damages is not admitted until compensatory liability has been established; and (7) may subject defendants to multiple penal sanctions for the same alleged conduct or "offense".

SEVENTEENTH DEFENSE

20. Any claim against Dead Sea or Bromine Compounds for damages or in contribution or indemnity arising from exposure to DBCP that neither Dead Sea nor Bromine Compounds manufactured, sold or distributed is unconstitutional under the due process, equal protection, excessive fines, and takings clauses of the constitutions of the United States and State of Hawaii.

EIGHTEENTH DEFENSE

21. Plaintiffs and Third-Party Plaintiff are not entitled to the relief requested under any applicable foreign law.

NINETEENTH DEFENSE

22. The Plaintiffs' and Third-Party Plaintiff's claims are barred, in whole or in part, as a result of prior releases, settlements, and/or agreements, including certain Agreements executed on April 11, 1994 and September 15, 1995.

TWENTIETH DEFENSE

23. The Plaintiffs' and Third-Party Plaintiff's claims are barred, in whole or in part, under the doctrines of res judicata and issue preclusion.

TWENTY-FIRST DEFENSE

24. The Plaintiffs' and Third-Party Plaintiff's claims are preempted by the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136, et seq.

TWENTY-SECOND DEFENSE

25. The Third-Party Complaint is barred because the actions or omissions of Dead Sea and Bromine Compounds, if any, were de minimis and did not proximately cause any of Plaintiffs' alleged damages, injuries, or expenses. If Dead Sea and/or Bromine compounds are established to have taken any actions or omissions pertinent to the allegations of the

Plaintiffs' Complaint, the Third-Party Complaint is nevertheless barred by the doctrine of de minimis non curat lex.

TWENTY-THIRD DEFENSE

26. The Plaintiffs' Complaint and Third-Party Complaint are barred by prescription and/or the applicable statutes of limitations or statues of repose and the doctrines of laches, waiver and estoppel.

TWENTY-FOURTH DEFENSE

27. Any injuries resulting from the use of the subject product or products, which injuries are hereby expressly denied, were not foreseeable to Dead Sea and/or Bromine Compounds given the state of knowledge and state of the art at the time of their alleged actions or omissions.

TWENTY-FIFTH DEFENSE

28. The Third-Party Complaint, and each alleged cause of action therein, is barred on the grounds that products or materials manufactured, distributed, or sold by Dead Sea or Bromine Compounds, if any, were not a substantial factor in bringing about the injuries and damages complained of by Plaintiffs. Dead Sea and Bromine Compounds specifically deny that the Plaintiffs sustained any injury as a result of contact with or use of any product manufactured, formulated, distributed, or sold by Dead Sea or Bromine Compounds.

TWENTY-SIXTH DEFENSE

29. If Plaintiffs alleged suffered injuries attributable to the use of any product or material manufactured, packaged, labeled or sold by Dead Sea or Bromine Compounds, such injuries were solely caused by and attributable to the unreasonable, unforeseeable and inappropriate purpose and improper use or misuse or disposal that was made of said product or material.

TWENTY-SEVENTH DEFENSE

30. The benefits of the products, chemicals and compounds referred to in the Complaint outweighed the risks of danger, if any, inherent in such products, chemicals and compounds.

TWENTY-EIGHTH DEFENSE

31. Neither Plaintiffs nor Third-Party Plaintiff reasonably relied on any representation, disclaimer, warning, or other act or omission of Dead Sea or Bromine Compounds.

TWENTY-NINTH DEFENSE

32. All conduct and activities of Dead Sea and Bromine Compounds relevant hereto conformed to statutes, government regulations and industry standards based upon the state of knowledge existing at all relevant times.

THIRTIETH DEFENSE

33. The production, sale, packaging, and labeling of the products or materials referred to in the Complaint, if any, were licensed and/or permitted by any government having jurisdiction over such matters.

THIRTY-FIRST DEFENSE

34. Others modified, altered, changed, or added additional substances to the products or materials, if any, manufactured, sold, or distributed by Dead Sea or Bromine Compounds, so that such changes in any said products or materials proximately caused Plaintiffs' injuries, loss and damages, if any.

THIRTY-SECOND DEFENSE

35. Products or materials manufactured, sold, or distributed by Dead Sea or Bromine Compounds pertaining hereto, if any, were not dangerous or defective, and the alleged

hazards or dangers, if any, were created by the conduct of others.

THIRTY-THIRD DEFENSE

36. The products of Dead Sea and Bromine Compounds, if any, were sold to sophisticated intermediaries and/or users and/or purchasers with respect to the products who had any then-available knowledge of any risks involved in the use of said products.

THIRTY-FOURTH DEFENSE

37. The Dead Sea and Bromine Compounds' products and materials at issue here at all times were produced and marketed in conformity with the existing state-of-the-art.

THIRTY-FIFTH DEFENSE

38. Products or materials supplied by Dead Sea or Bromine Compounds, if any, to others, were not themselves hazardous, dangerous or defective. It a pesticide formulated using such products or materials, if any, is determined to have been hazardous, dangerous or defective, the alleged hazards, dangers, or defects of such pesticide, it any, were not caused by any act, omission, product, or material of Dead Sea or Bromine Compounds but were, rather, caused by the acts or omissions (such as improper marketing of the pesticides, improper instructions or training as to use of the pesticide improper failure to provide warnings as to the use, misuse, or disposal of the pesticide, or improper use, misuse, or disposal of the pesticide) of other sophisticated corporations or other persons that neither Dead Sea nor Bromine Compounds controlled.

THIRTY-SIXTH DEFENSE

39. To the extent products or materials, if any, supplied to others by Dead Sea or Bromine Compounds were bulk chemicals that could not be used by the consumer without substantial modification, alteration, packaging, distribution,

marketing, and instructions and warnings as to use or misuse, Dead Sea and/or Bromine Compounds were mere bulk suppliers of raw materials to other sophisticated corporations and did not proximately or legally cause any damages or expenses to Plaintiffs or Third-Party Plaintiff.

THIRTY-SEVENTH DEFENSE

40. The claims are barred by the doctrines of unclean hands and in pari delicto potior est conditio possidentis due to the acts or omissions of the Third-Party Plaintiff and/or others whose acts or omissions can be imputed to the Third-Party Plaintiff.

THIRTY-EIGHTH DEFENSE

41. Any recovery against Dead Sea or Bromine Compounds is limited to the cognizable damages that are established to have been sustained as a proximate result of any tortious conduct or omissions of them. Neither Dead Sea or Bromine Compounds is liable for any damages sustained as a result of the tortious conduct or omissions of any other defendant or person.

THIRTY-NINTH DEFENSE

42. The cognizable damages, if any, that the Plaintiffs and/or Third-Party Plaintiff have sustained are divisible or reasonably capable of apportionment and Dead Sea and Bromine Compounds cannot be held liable for any harm that is not attributable to their conduct or omissions, if any, that are established to have been tortious.

FORTIETH DEFENSE

43. Under the Foreign Sovereign Immunities Act, neither the Plaintiffs nor any other party is entitled to a jury trial as to any claim against Dead Sea or Bromine Compounds, which object to a trial by jury of any claim brought against them.

FORTY-FIRST DEFENSE

44. The Plaintiffs' and Third-Party Plaintiff's claims are barred due to failure to join one or more indispensable parties.

FORTY-SECOND DEFENSE

45. The Plaintiffs' and Third-Party Plaintiff's claims are barred by the doctrine of lis pendens, other prior pending suits in other jurisdictions.

FORTY-THIRD DEFENSE

46. Dead Sea and Bromine Compounds aver that alleged injuries of which the Plaintiffs complain were not caused or brought about by any product manufactured, formulated, distributed by Dead Sea or Bromine Compounds, and such alleged injuries were due to causes in no manner connected with or related to Dead Sea, Bromine Compounds, or any of their products.

FORTY-FOURTH DEFENSE

47. If the Plaintiffs are found to have suffered injuries and damages consequent upon the fault of any party for whom Dead Sea or Bromine Compounds may be held responsible or accountable, all of which is specifically denied, then said injuries or damages were caused and/or contributed to and/or aggravated by the fault, negligence, last clear chance, assumption of risk, comparative fault and/or inattention of the Plaintiffs and/or the negligence and/or strict liability of others for whom or for which Dead Sea and Bromine Compounds may not be held responsible and/or an act of God or a preexisting condition, and Dead Sea and Bromine Compounds are entitled to have any award or recovery due to the Plaintiffs or Third-Party Plaintiff barred, mitigated or reduced accordingly.

FORTY-FIFTH DEFENSE

48. Any alleged injuries sustained by Plaintiffs as a result of exposure to DBCP, which allegations are specifically denied, were the result of the negligent failure of the Plaintiffs, or others for whom Dead Sea and Bromine Compounds may not be held responsible, to guard against unsafe contact, if any, with products containing DBCP. Such conduct constitutes the proximate cause and/or sole producing cause of any alleged injuries sustained by Plaintiffs.

FORTY-SIXTH DEFENSE

49. The negligent failure of the Plaintiffs, and/or others for whom Dead Sea and Bromine Compounds may not be held responsible, to guard against unsafe contact, if any, with products referred to in the Plaintiffs' Complaint constitutes a new and independent cause of any alleged injuries sustained by Plaintiffs. Dead Sea and Bromine Compounds specifically plead superseding and/or intervening cause as a defense.

FORTY-SEVENTH DEFENSE

50. Dead Sea and Bromine Compounds specifically deny that they breached any warranty, expressed or implied to the Plaintiffs or to anyone else. Furthermore, Dead Sea and Bromine Compounds specifically deny that they manufactured any product to which Plaintiffs were exposed which was in any manner defective or unreasonably dangerous. Furthermore, Dead Sea and Bromine Compounds deny that they violated any alleged duty to warn the Plaintiffs or anyone else. Dead Sea and Bromine Compounds further deny that they violated any alleged duty of care or committed negligence or any other tort.

PRAYER FOR RELIEF

WHEREFORE, Dead Sea and Bromine Compounds pray for judgment as follows:

1. That the Third-Party Plaintiff take nothing by reason of the Third-Party Complaint or any claims stated therein;

2. That the Third-Party Complaint and each cause of action contained therein be dismissed with prejudice;

3. That Dead Sea and Bromine Compounds recover their costs, disbursements, expenses, and attorneys' fees herein;

4. That if Dead Sea and Bromine Compounds are found liable, the degree of responsibility and liability for the resulting damages be determined and they be liable only for that portion of the total damages in proportion to their responsibility for the same; and

5. That the Court grant such other and further relief as it may deem just and proper.

DATE: Honolulu, Hawaii, November 20, 1997.

/s/
GEORGE W. BRANDT
Attorney for Third-Party Defendants
DEAD SEA BROMINE CO., LTD. and
BROMINE COMPOUNDS LIMITED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERRARDO DENNIS PATRICKSON, et al. Plaintiffs, vs. DOLE FOOD COMPANY, INC., et al. Defendants, DOLE FOOD COMPANY, INC., Defendant/Third-Party Plaintiff, vs. DEAD SEA BROMINE CO., LTD. and BROMINE COMPOUNDS LIMITED, Third-Party Defendants.	CIVIL NO. 97-01516 HG

DECLARATION OF NOAH EHRLICH

NOAH EHRLICH affirms and declares under penalty of perjury:

1. I am the Vice President of Industrial Chemicals of Dead Sea Bromine Company Ltd. ("Dead Sea Bromine"), a company organized under the laws of the State of Israel with

principal offices in Beer Sheva, Israel. I hold the same position with Bromine Compounds Ltd. ("BCL"), a wholly owned subsidiary of Dead Sea Bromine, also organized under the laws of Israel and headquartered in Beer Sheva. (Dead Sea Bromine and BCL are sometimes collectively referred to as the "Companies" in this declaration.) I submit this declaration in opposition to the Plaintiff's Motion to Remand.

2. I have been employed in my current position since January 1, 1995. From January 1, 1993 through December 31, 1994, I was Head of the Marketing Division, and from August 1985 through December 31, 1991, I was Head of the Finance Division, a position similar to that of Chief Financial Officer. In all, I have been employed by the Dead Sea Bromine Group of companies for some twenty years, including five years with Ameribrom, Inc., a wholly-owned United States subsidiary of Dead Sea Bromine, from March 1980 to July 1985. During my tenure with the Dead Sea Bromine Group, I have become familiar with and knowledgeable concerning the Companies' respective business operations and their corporate structure.

3. The information set forth below is based, in part, on personal knowledge. It is also based on general knowledge I have acquired during the course of my employment, including but not limited to my review of the Companies' records and documents including specifically the documents and records identified below. Any information of which I do not have personal knowledge I believe to be true and correct based on my experience and familiarity with the Companies.

OVERVIEW

4. As described more fully below, and in the accompanying declarations from the corporate secretaries of the Companies and their successive parent corporations, the State of Israel did possess a majority ownership interest in the Companies during the time period from 1967 to February 1995, the precise structure of which varied from time to time over the years. See ¶¶ 9-16. Similarly, the State had a

significant interest in and exercised control and supervision of the Companies' affairs, in numerous matters, large and small, and in a wide variety of ways. See ¶¶ 20-25.

5. Before elaborating on the State's ownership and oversight of the Companies during this period, I will briefly describe the nature of the Companies' business and the context in which they have operated throughout their history.

6. Dead Sea Bromine is and always has been engaged primarily in the business of extracting bromine—a chemical element—from the brines of the Dead Sea. The Dead Sea, which is the lowest spot on earth, is an inland lake, rich in a number of minerals, such as bromine, potassium and magnesium, the processing of which is facilitated by stark climatic conditions—heat and dryness—which enable solar evaporation to function as the initial stage of the chemical processing. The Dead Sea is also one of the most important (and relatively few) natural resources in Israel. Indeed, the enterprise of exploiting the mineral wealth of the Dead Sea has been carried on pursuant to an exclusive license and sublicensee, (called the Dead Sea Concession) from the State. See ¶ 21.

7. Since its incorporation in 1955, Dead Sea Bromine has developed the business of producing, distributing and selling relatively large quantities of elemental bromine to chemical plants and companies located in Israel and other countries, where it is further processed into a variety of bromine compounds for diverse uses. BCL, which was created in 1961, is engaged primarily in the business of taking the elemental bromine extracted by Dead Sea Bromine and combining it with other chemicals to produce a number of chemical compounds having diverse industrial, commercial, and agricultural uses. Approximately 90% of these chemical compounds are exported.

8. Throughout the period 1967-1995, the Companies were operated under commercial principles, and, like all

commercial enterprises, attempted to earn a profit. However, the Companies differed in certain respects from privately owned commercial businesses. They were created, owned and controlled by the State. They operated pursuant to an exclusive license from the State to exploit, develop and market the State's natural resources. They were subject to a significant degree of State oversight, supervision and control. On a limited number of occasions the State required the Companies to deviate from commercial principles in conducting their affairs, to support or pursue some other policies or objectives that the State deemed more important. Even today, following a move toward privatization that in February 1995 reduced the State's ownership interest to slightly less than 50%, the State of Israel continues to retain certain important measures of control over the Companies that evidence: the Companies' key roles in the exploitation, development and sale of the State's natural resources; the Companies' integral position in the Israeli industrial and economic base; and the State's central interest in their management and welfare.

THE OWNERSHIP OF BCL AND DEAD SEA BROMINE

9. Attached to this Declaration as Exhibits "A1-A3" are true and correct copies of declarations from officers of Dead Sea Bromine, BCL and their parent companies. These declarations establish the ownership of Dead Sea Bromine and BCL during the period 1967-1997. The facts related in these declarations are true and correct to the best of my knowledge. The information contained in these declarations is summarized below.

10. From in or about 1968-1970, the State of Israel owned approximately 99% of the stock of Dead Sea Works ("DSW") and one share of Dead Sea Bromine. DSW owned 99.9% of the shares of Dead Sea Bromine. Dead Sea Bromine, in turn, owned 50% of the ordinary shares of BCL. In addition, Dead

Sea Bromine held a management share in BCL which entitled Dead Sea Bromine to appoint an additional director. Accordingly, Dead Sea Bromine held a majority interest and a controlling position in BCL during this period.

11. From in or about 1970 to 1975, the State of Israel owned approximately 99% of the stock of DSW and one share of Dead Sea Bromine. DSW in turn owned some 99.9% of Dead Sea Bromine, and starting in late 1969 or early 1970, DSW owned 25% of BCL's ordinary shares. Dead Sea Bromine owned 50% of the ordinary shares of BCL (bringing the State's overall ownership interest in BCL to 75%). The remaining 25% of the ordinary shares of BCL was owned by an unrelated corporate entity.

12. In or about 1975, the State restructured its ownership of the Companies and conveyed all the shares of DSW to Israel Chemicals Ltd. ("ICL"), an Israeli corporation owned entirely by the State, leaving its ultimate ownership interest in DSW and the Companies essentially the same.

13. In or about 1981, DSW acquired the remaining 25% interest in BCL that had been owned by the unrelated corporation, such that BCL was owned entirely by DSW and its wholly-owned subsidiary, Dead Sea Bromine.

14. In or about 1984, all of DSW's shares of BCL were conveyed to Dead Sea Bromine, making BCL a wholly owned subsidiary of Dead Sea Bromine.

15. The ownership configuration described above remained in place until 1992. Charts depicting the State of Israel's majority ownership and control of the Companies during the period 1968-1985 are attached in the appendix as Exhibits "B1-B4."

16. In 1992, the State of Israel began to privatize ICL by decreasing over time the number of shares of ICL owned by the State. In February 1992, some 19.97% of ICL stock was offered for public sale on the Tel Aviv Stock Exchange and to

employees of ICL. Again, in February 1995, the State sold an additional 24.9% of its ICL stock which, taken together with certain minor transactions in the intervening years, reduced its share ownership in ICL to approximately 48.5%. As a consequence, neither ICL nor the Companies are considered any longer to be a government company or government subsidiary company under Israeli law. (The structure of the ICL group of companies was also reorganized in 1995 by the conveyance of DSW's shares of Dead Sea Bromine to ICL. Today, both DSW and Dead Sea Bromine are direct subsidiaries of ICL.)

17. While the State of Israel's ownership interest in ICL was reduced, the State's ability to control fundamentally important corporate decisions of the Companies was preserved. The Companies' respective Articles of Association were amended to expressly recognize and recite the State of Israel's historical and current vital interests in the Companies, and to create a Special State Share, giving the State of Israel certain extraordinary powers to protect its vital interests in and over the functions performed by the Companies.

18. The State of Israel's vital national interests in the Companies are expressly recited in their respective Articles of Association, relevant excerpts of which are attached hereto as Exhibits "C" and "D." These vital interests are as follows:

(a) Preservation of the character of Dead Sea [and BCL] as an Israeli company whose center of business and management is in Israel.

(b) Supervision of the control of quarries and natural resources for their efficient development and exploitation, including maximum application in Israel of the results of the investments, research and development.

(c) Prevention of the achievement of a position of influence in Dead Sea [and BCL] by hostile elements

or elements which may prejudice the State's foreign and defense interests.

(d) Prevention of the achievement of a position of influence in Dead Sea [and BCL] or the management of Dead Sea [and BCL] where such acquisition or management could create a material conflict of interest which may prejudice one of the vital interests particularized in sub-paragraphs (a), (b) and (c) above.

Articles of Association ("AA"), Appendix, Ex. C, ¶ 13B(8); Appendix, Ex. D, ¶ 13B(8) (emphasis added).

19. The Articles of Association go on to describe various extraordinary powers conferred upon the State as the holder of the Special State share. For example, resolutions providing for the alteration or reorganization of the structure of the Companies, voluntary liquidation, and merger are invalid without the consent of the State of Israel. AA, Ex. C and Ex. D, ¶ 13B(2). Similarly, any acquisition or holding of 14% or more of the Companies' issued share capital and any acquisition or holding of 25% or more of such issued share capital, including the augmentation of an existing holding to 25%, are invalid without the State of Israel's consent. AA, Ex. C and Ex. D, ¶ 13B(3)(a) and ¶ 13B(3)(b). Additionally, the consent of the State of Israel is required for each portion of a share holding in the share capital which confers upon its holder the right, or actual or potential ability to appoint directly or indirectly 50% or more of the directors of the respective Companies. AA, Ex. C and Ex. D, ¶ 13B(3)(c). Finally, the substantial assets of the Companies cannot be sold without State approval. AA, Ex. C and Ex. D, ¶ 13B(l)(b).

THE UNIQUE GOVERNMENTAL INTEREST IN DEAD SEA BROMINE AND BCL

20. In addition to the majority ownership of the Companies by the State of Israel during the relevant period, Dead Sea Bromine and BCL performed or discharged functions vital to

the State of Israel and were subject to control, regulation and supervision by the State. As discussed below, the Israeli government monitored, supervised and regulated the Companies on matters large and small through or by virtue of the Dead Sea Concession and Sub-concession, the Government Companies Law, and the Government Companies Authority.

a. The Dead Sea Concession and Sub-concession

21. In 1961, the Knesset (the legislative body of the State of Israel) enacted the Dead Sea Concession, which granted an exclusive license to DSW to obtain, render marketable, sell and dispose of the mineral salts, minerals and chemicals in and beneath the Dead Sea. With the approval of the Knesset, DSW in turn granted a Sub-concession (the "Dead Sea Sub-concession") to Dead Sea Bromine, conferring exclusive rights to obtain, render marketable, sell and dispose of bromine and bromine compounds from the mineral salts, minerals and chemicals in and beneath the Dead Sea. Translations of the Dead Sea Concession and Sub-concession, which I believe to be true and correct, are annexed in the Appendix as Exhibits "E" and "F."

b. The Government Companies Authority and Government Companies Law

22. Until 1995, Dead Sea Bromine and BCL were also subject to the regulation and oversight of the Government Companies Authority (the "GCA"), an administrative office established by the Ministry of Finance. In 1975, the powers and responsibilities of the GCA were set forth in the Government Companies Law ("GCL"), a copy of which is included in the Appendix as Exhibit "G." The GCL provides for the regulation and oversight by the government, acting through the GCA, certain ministers of the Israeli Government, and other state officials and committees, to monitor and ensure government input and approval of the affairs of corporations that are majority owned by the State.

23. During the period 1967 to 1995, the State of Israel has circumscribed, overseen, regulated and supervised the activities, operations and management of the Companies in a wide variety of ways. Included in the Appendix are English translations of a number of documents and relevant excerpts of documents that have been located in the Companies' files that evidence the numerous and far-ranging interactions between the Companies and the Israeli government. These include Circulars and Directives published and distributed by the GCA describing various policies, requirements, recommendations or directives to be followed by government-owned corporations, correspondence between the GCA and the Companies concerning various matters, and minutes of the Companies' shareholders and Board of Directors meetings. For the most part, these are self-explanatory.

24. As evidenced by the accompanying documents, the State of Israel either through Government Ministers, the Appointments Review Committee established by the GCL, the Government Companies Authority and/or the Attorney General have, among other things:

a. regularly appointed employees of the Ministry of Finance and the Ministry of Industry and Trade to the Companies' respective Boards of Directors (Appendix, Exhibits "H1" - "H22");

b. issued directives as to the rules and procedures i) to be followed by the Companies' respective Boards of Directors, ii) prohibiting the appointment of alternate or substitute directors, iii) terminating the tenure of directors for excessive absences; and Improper Venue and Insufficiency of Service of Process) specifying the content of the Board minutes (Appendix, Exhibits "I1" - "I20");

c. approved all of the Companies' directors (Appendix, Exhibits "J1" - "J8");

d. appointed employees of the Authority to act as observers at the Companies' Board of Directors meetings and to attend subcommittee meeting of the Boards such as the Balance Sheet Sub-Committee (Appendix, Exhibits "K1" - "Kl0");

e. monitored the attendance and the activities of members of the Companies' Boards of Directors (Appendix, Exhibits "L1" - "L13");

f. approved the Companies' managing directors (the equivalent of the president or chief executive officer), as well as their compensation (Appendix, Exhibits "Ml" - "M3");

g. established procedures for the selection of legal advisors including the requirement that the GCA approve the selection (Appendix, Exhibits "N1" - "N32");

h. established procedures for the selection of auditors, including the requirement that the GCA approve the selection (Appendix, Exhibits "O1" - "O9");

i. issued directives as to dispute resolution practices to be followed between government bodies, including the Companies as government companies (Appendix, Exhibits "P1" - "P11");

j. refused to approve or extend the appointment of directors (Appendix, Exhibit "Q");

k. placed restrictions on the circumstances and the amounts of charitable contributions which could be made by the Companies (Appendix, Exhibits "R1" - "R22");

l. issued directives that the Companies only contract with entities having a value added tax certificate in compliance with Israeli law (Appendix, Exhibits "S1" - "S6");

m. on multiple occasions required and/or strongly encouraged the Companies to prefer the purchases of Israeli products even if the cost was higher than the cost of non-Israeli goods (Appendix, Exhibits "T1"-"T20");

n. required that the Companies freeze salaries and wages (Appendix, Exhibits "Ul" - "U3");

o. advised the Companies to insert clauses in their contracts with subcontractors (Appendix, Exhibits "V1" - "V3");

p. restricted foreign travel by the Companies' officers and directors (Appendix, Exhibits "W1" - "W6");

q. approved or set the compensation to be paid to the Companies' executives (Appendix, Exhibit "Y") including the retirement benefits of the Companies' executives (Appendix, Exhibit "Z");

r. established policies as to the utilization and standardization of company cars (Appendix, Exhibits "AA1" - "AA8");

s. established or set labor policies and approved the Companies' labor agreements (Appendix, Exhibits "BB1" - "BB16");

t. issued directives regarding certain hiring and promotion policies to be followed by the Companies (Appendix, Exhibits "CC1" - "CC8");

u. encouraged the Companies to become "models of efficiency," and to curb or decrease their expenses (Appendix, Exhibits "DDl" - "DD13");

v. approved the investments made by the Companies (Appendix, Exhibits "EEl" - "EEl0");

w. approved changes to the capital structure of the Companies as well as the issuance, sale and transfer of shares (Appendix, Exhibits "FF1" - "FF34");

x. approved bonuses to be paid to the Companies' employees (Appendix, Exhibits "GG1" - "GGl0");

y. approved the establishment of a subsidiary (Appendix, Exhibit "HH");

z. required that changes be made to the Companies' Articles of Association (Appendix, Exhibits "II1" - "II14");

aa. restricted ICL from changing the Companies' objects, transferring their shares, or changing their registered share capital or selling their assets without obtaining Government approval (Appendix, Exhibit "JJ");

bb. reviewed, approved and made recommendations with respect to the Companies' budgets, business plans and operations (Appendix, Exhibits "KKl" - "KK15").

25. The State of Israel possessed other mechanisms to regulate and control the Companies during some or all of this time period. Reports had to be transmitted on a regular basis to the Authority. Appendix, Exhibits "I-4" - "I-13;" and Ex. G §§ 25 and 34; Ex. E ¶ 16(b); and Ex. F ¶ 18(b). Additionally, the government had the right, under the GCL and the Dead Sea Concession and Sub-Concession, to inspect, on demand, the Companies' books, records, documents, and to obtain information from the Companies' employees as to any and all aspects of the Companies' business activities and operations. Exhibits "G" §§ 20, 45 and 55; "E" ¶ 16(a) and "F" ¶ 18(a). Moreover, the Companies were subject to audits by the State.

CONCLUSION

26. As is evident from the above examples, the State of Israel oversaw, regulated, supervised, and monitored the

Companies' business affairs and operations covering a wide range of matters, large and small. Through the GCL, the GCA, the Dead Sea Concession and Sub-Concession, the Articles of Association, and its majority ownership and control of the Companies, the State of Israel established the Companies' objectives of exploiting, developing and marketing the State's natural resources, and actively monitored, regulated and supervised the Companies' management, affairs and activities.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Beer Sheva, Israel
on December 18, 1997.

/s/
NOAH EHRLICH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERRARDO DENNIS PATRICKSON, et al. Plaintiffs, vs. DOLE FOOD COMPANY, INC., et al. Defendants,	)	CIVIL NO. 97-01516 HG
DOLE FOOD COMPANY, INC., Defendant/Third-Party Plaintiff, vs. DEAD SEA BROMINE CO., LTD. and BROMINE COMPOUNDS LIMITED, Third-Party Defendants.	)	

DECLARATION OF DANIEL C. SUGARMAN

DANIEL C. SUGARMAN affirms and declares under penalty of perjury:

1. I am the secretary of Dead Sea Works Ltd. ("Dead Sea Works"), a company organized under the laws of the State of Israel, with principal offices in Beer Sheva, Israel.

2. As the secretary of Dead Sea Works, I am the responsible for the custody of corporate records and documents pertaining to the share ownership of the company. The information set forth below is a true and accurate summary of the information in Dead Sea Works' books and records, which I have caused to be examined in connection with the preparation of this declaration.

3. During the period of time from 1968 to 1975, the State of Israel owned approximately 99% of the shares of Dead Sea Works.

4. In 1975, the State of Israel conveyed all of its shares of Dead Sea Works to Israel Chemicals Ltd. ("ICL").

5. From 1975 to 1977, ICL owned approximately 98% of the shares of Dead Sea Works.

6. ICL reduced its shareholdings in Dead Sea Works to approximately 91% in 1978, and to approximately 88% in 1983.

7. From 1983 to the present time, ICL owned and continues to own approximately 88% of the shares of Dead Sea Works.

8. In 1992, Dead Sea Works issued a special state share to the State of Israel. Since its issuance, the special state share has been and continues to be held by the State of Israel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Beer Sheva, Israel
on December 15, 1997.

/s/
Daniel C. Sugarman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERRARDO DENNIS PATRICKSON, et al. Plaintiffs, vs. DOLE FOOD COMPANY, INC., et al. Defendants,	)	CIVIL NO. 97-01516 HG
DOLE FOOD COMPANY, INC., Defendant/Third-Party Plaintiff, vs. DEAD SEA BROMINE CO., LTD. and BROMINE COMPOUNDS LIMITED, Third-Party Defendants.	)	

DECLARATION OF Noam Heth-Makov

Noam Heth-Makov affirms and declares under penalty of perjury:

1. I am the secretary of Israel Chemicals Ltd. ("ICL"), a company organized under the laws of the State of Israel, with principal offices in Beer Sheva, Israel.

2. As the secretary of ICL, I am the custodian of records and documents pertaining to the share ownership of the company. The information set forth below is a true and accurate summary of the information in ICL's books and records, which I have caused to be examined in connection with the preparation of this declaration.

3. During the period of time from 1972 to 1992, all of the shares of ICL were owned by the State of Israel.

4. In or about February 1992, the State of Israel sold some 19.97% of the shares of ICL to the public and to company employees, reducing the State's share ownership of the company to approximately 80.03%. In 1992, ICL also issued a special state share to the State of Israel. Since its issuance, the special state share has been and continues to be held by the State of Israel.

5. In or about February 1995, the State sold an additional 24.9% of ICL stock. The latter transaction, combined with certain minor transactions in the intervening time period, reduced the State's share ownership of ICL to approximately 48.52%.

6. In or about March 1997, the State sold an additional 17% of ICL stock which reduced the State's share ownership of ICL to approximately 31.52%, which it remains to the present day.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Beer Sheva, Israel
on December 15, 1997.

/s/
Noam Heth-Makov

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERRARDO DENNIS PATRICKSON, et al. Plaintiffs, vs. DOLE FOOD COMPANY, INC., et al. Defendants,	CIVIL NO. 97-01516 HG
DOLE FOOD COMPANY, INC., Defendant/Third-Party Plaintiff, vs. DEAD SEA BROMINE CO., LTD. and BROMINE COMPOUNDS LIMITED, Third-Party Defendants.	

DECLARATION OF BAT-SHEVA GOLAN

BAT-SHEVA GOLAN affirms and declares under penalty of perjury:

1. I am the secretary of Dead Sea Bromine Company Ltd. ("DSB") and Bromine Compounds Limited ("BCL"), both of which are companies organized under the laws of the State of Israel with principal offices in Beer Sheva, Israel.

2. As the secretary of DSB and BCL, I am the custodian of their respective corporate records and documents pertaining to the share ownership of the companies. The information set forth below is a true and accurate summary of information in the companies' books and records, which I have caused to be examined in connection with the preparation of this declaration.

A. Ownership of Dead Sea Bromine Company Ltd.

3. During the period of time from 1965 to 1986, all of the shares of DSB were owned by Dead Sea Works, Ltd. ("Dead Sea Works"), except for one share, which was owned by the State of Israel.

4. In 1986, one share of DSB was transferred to each of Israel Chemicals, Ltd. ("ICL") and four ICL subsidiaries to be held in trust for Dead Sea Works. Dead Sea Works continued to own the remaining 99.99% of the shares of DSB except for the single share owned by the State of Israel.

5. In or about February 1992, the State of Israel converted its ordinary share into a special state share, which it holds to the present day.

6. In February 1995, Dead Sea Works distributed its shares of DSB to its shareholders, after which ICL held approximately 89% of the shares of DSB, and the remaining approximately 11% were held by the public.

B. Ownership of Bromine Compounds Limited

7. During the period of time from 1965 to 1969, DSB owned 50% of the ordinary shares of BCL and one Management Share. The Management Share carried with it the right to appoint one direct to the Board of Directors. Two

companies unrelated to the Israeli Government each owned 25% of the ordinary shares of BCL during this time period.

8. In late 1969 or early 1970, Dead Sea Works acquired 25% of the ordinary shares of BCL from one of the unrelated companies. At this time and continuing to 1981, DSB owned 50% of the ordinary shares of BCL plus a management share, Dead Sea Works owed 25% and Makhteshim, an unrelated entity, owned the remaining 25% of the ordinary shares of BCL.

9. On or about October 1970, the rights attached to the management share were amended to remove the special right to appoint a director.

10. In 1981, Makhteshim transferred all of its shares of BCL to Dead Sea Works thereby giving Dead Sea Works 50% ownership of the ordinary shares in BCL, with DSB owning the remaining 50% of the ordinary shares.

11. In 1984, Dead Sea Works transferred all of its shares in BCL to DSB and DSB transferred one ordinary share to ICL.

12. In or about February 1992, a special state share was issued by BCL to the State of Israel. Since its issuance, the special state share has been and continues to be held by the State of Israel.

13. In summary, the share ownership of BCL between the years 1965 to present was as follows:

1965 - 1969	50% ordinary shares - DSB; 25% ordinary shares - unrelated company; 25% ordinary shares - unrelated company; 1 management share - DSB.
1970 - 1981	50% ordinary shares - DSB; 25% ordinary shares - Dead Sea Works; 25% ordinary shares - Makhteshim; 1 management share - DSB.

1981 - 1984	50% ordinary shares - DSB; 50% ordinary shares - Dead Sea Works; 1 management share - DSB.
1984 - 1992	99.9% ordinary shares - DSB; 1 ordinary share - ICL; 1 management share - DSB.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Beer Sheva, Israel
on December 15, 1997.

/s/
Bat-Sheva Golan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GERRARDO DENNIS PATRICKSON, et al. Plaintiffs, vs. DOLE FOOD COMPANY, INC., et al. Defendants.	CIVIL NO. 97-01516 HG
DOLE FOOD COMPANY, INC., Defendant/Third-Party Plaintiff, vs. DEAD SEA BROMINE CO., LTD. and BROMINE COMPOUNDS LIMITED, Third-Party Defendants.	

DECLARATION OF PETER R. PADEN

Peter R. Paden, an attorney licensed to practice law in the State of New York, affirms and declares under penalty of perjury:

1. I am a member of Robinson Silverman Pearce Aronsohn & Berman LLP. I am admitted to practice in the

U.S. Court of Appeals for the Second Circuit (1979); U.S. Court of Appeals for the Fifth Circuit (1996); U.S. District Court for the Southern District of New York (1977); U.S. District Court for the Eastern District of New York (1977); and U.S. District Court for the Northern District of New York (1984). I have been admitted pro hac vice to practice in this Court for purposes of this action.

2. Together with Thomas J. Brandt, Esq. of Sheinfeld Maley & Kay, P.C., I represent Dead Sea Bromine Co., Ltd. ("Dead Sea") and Bromine Compounds Limited ("BCL") in the consolidated cases styled: Franklin Rodriguez Delgado, et al. v. Shell Oil Co., et al., Civil Action No. H-94-1337, in the U.S. District Court for the Southern District of Texas, Houston Division ("Delgado"); Ramon Rodriguez v. Shell Oil Co., et al., Civil Action No. H-96-1790, in the U.S. District Court for the Southern District of Texas, Houston Division ("Rodriguez"); Lucas Pastor Canales Martinez, et al. v. The Dow Chemical Company, et al., Consolidated Civil Action No. 95-3212, formerly pending in the U.S. District Court for the Eastern District of Louisiana ("Martinez") and certain other related DBCP litigations. The statements set forth in paragraphs 1, 2, 3, 6 and 7 are based upon my personal knowledge, and those set forth in paragraphs 4 and 5 are made on the basis of information I have obtained in the course of this representation that I believe to be true.

3. Included within the Appendix to Dead Sea and BCL's Memorandum of Law in Opposition to Plaintiffs' Motion to Remand under Tabs "C" through "KK" are true and correct copies of documents previously produced by Dead Sea and BCL in prior DBCP litigations, including English language translations of the Companies' Articles of Association, the legislative concessions pursuant to which they operate, Israel's Government Companies Law and various business records maintained in the Companies' files are more fully described in ¶ 23 of the Declaration of Noah Ehrlich, executed December 18, 1997, annexed as Exhibit A.

4. Attached in the Appendix under Tabs "LL"; "MM"; "PP"; "SS" are true and correct copies of orders or decisions entered in other proceedings.

5. Attached in the Appendix under Tab "NN" is an excerpt from the brief filed in the United States Supreme Court by respondents in Gates v. Victor Fine Foods, 54 F.3d 1457 (9th Cir.), cert. denied sub nom., Fletcher's Fine Foods v. Gates, 116 S. Ct. 187 (1993), in opposition to a petition for certiorari.

6. Attached in the Appendix under Tab "001" and "002" are true and correct copies of an order and a transcript of proceedings in Delgado.

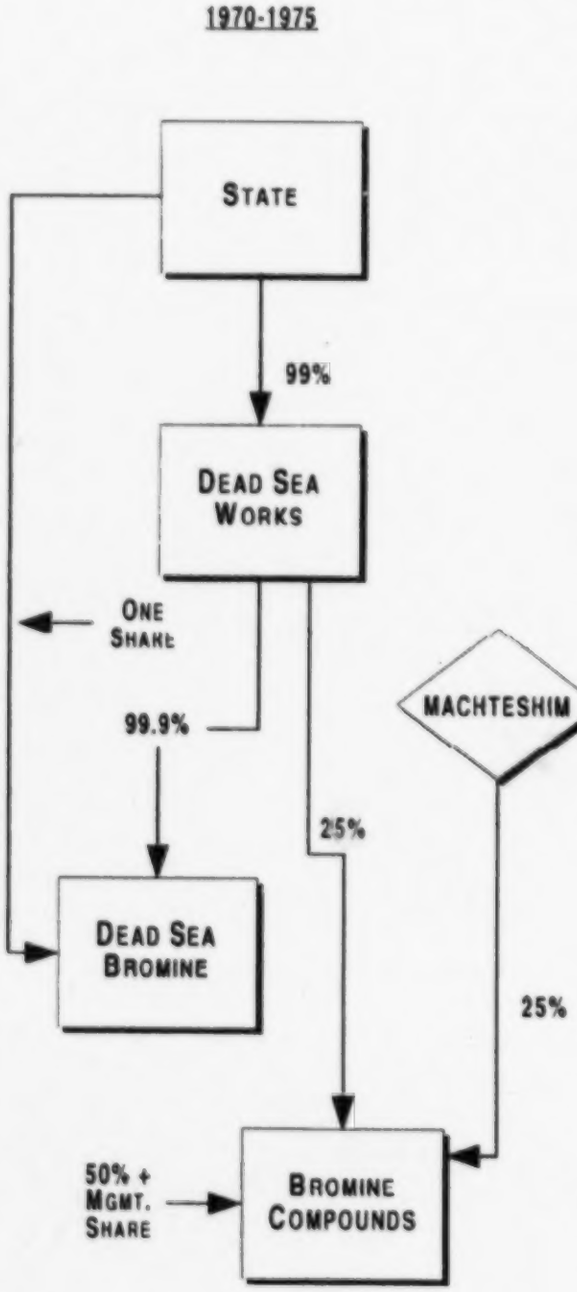
7. Attached in the Appendix under Tab "TT" is a true and correct copy of the transcript of the deposition of Noah Ehrlich taken in Martinez.

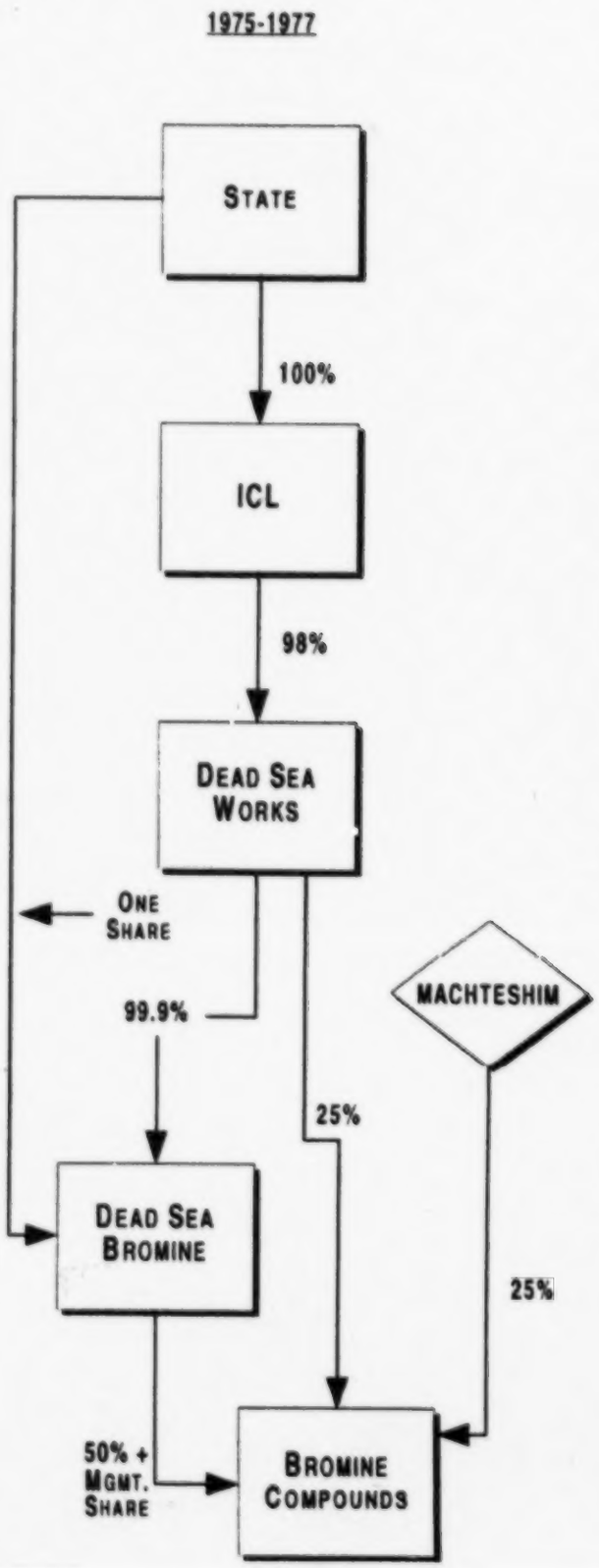
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at New York, New York
on March 16, 1998.

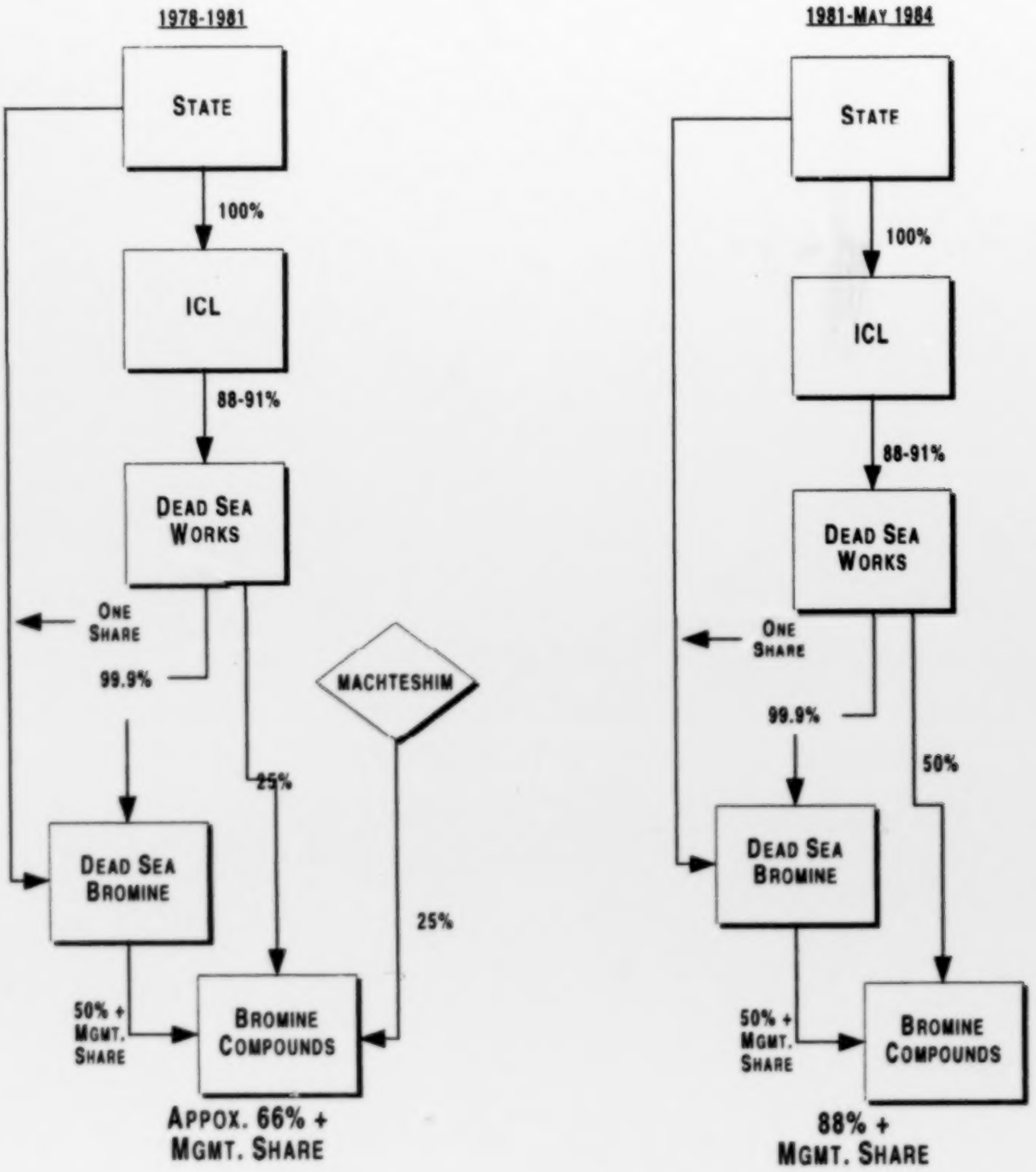
/s/
Peter R. Paden

Bromine Compounds, Ltd. Ownership Chart

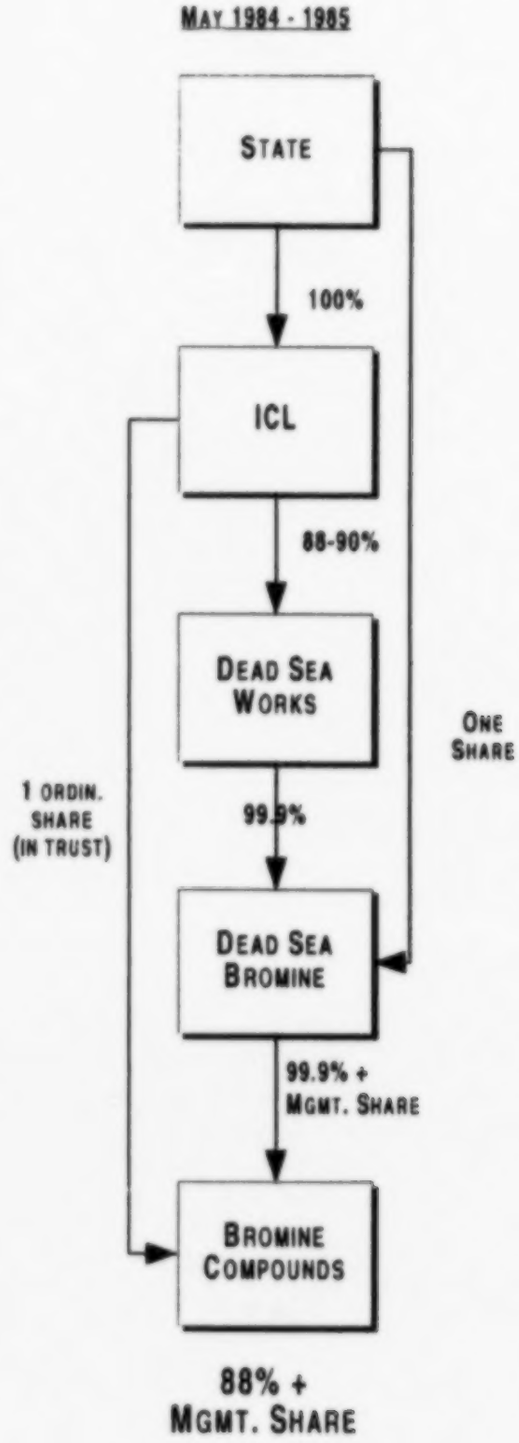




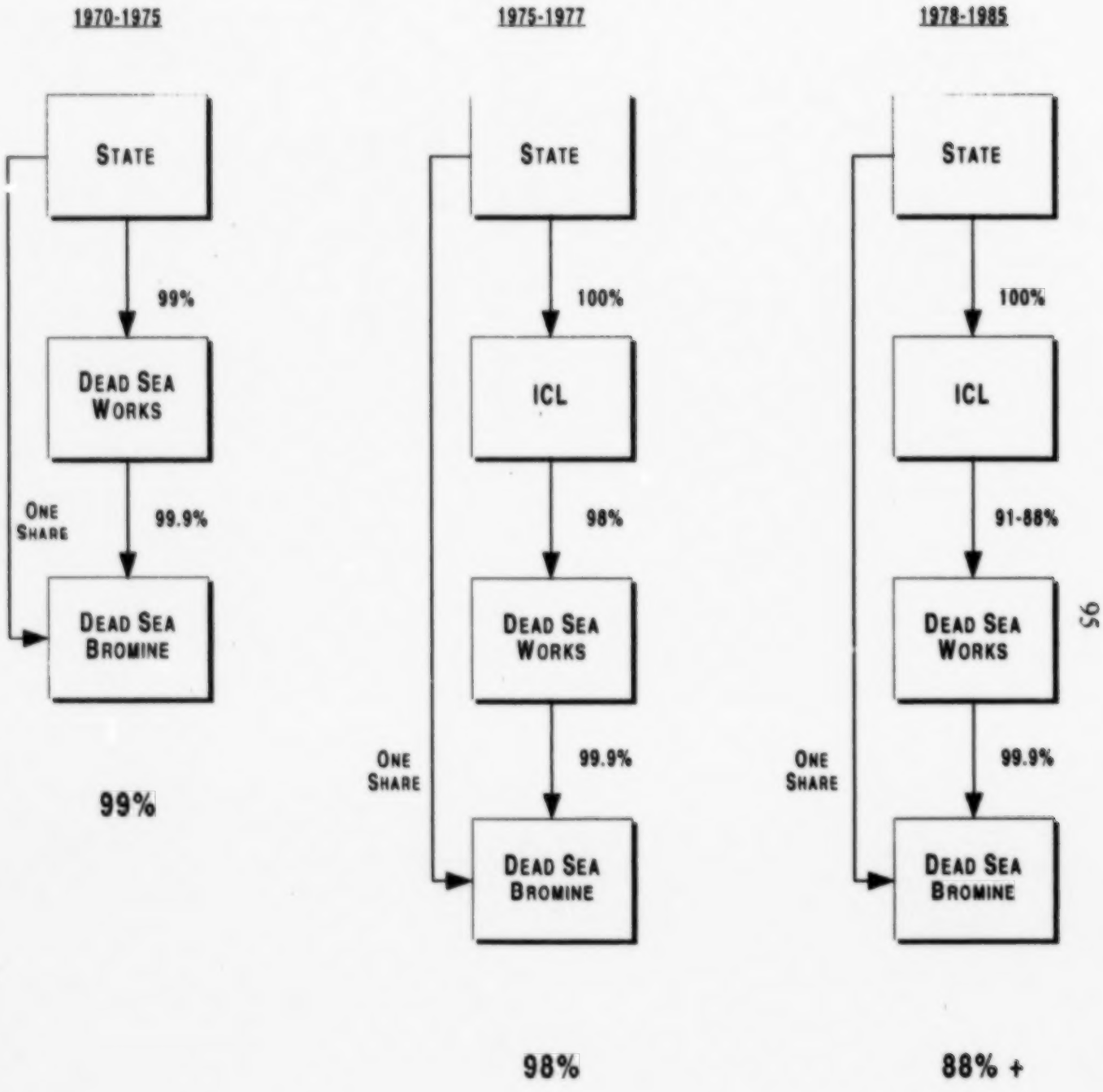
Bromine Compounds, Ltd. Ownership Chart



Bromine Compounds, Ltd. Ownership Chart



Dead Sea Bromine Company, Ltd. Ownership Chart



THE COMPANIES ORDINANCE
COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION
OF
DEAD SEA BROMINE COMPANY LTD.

(These Articles of Association have been adopted by a Special Resolution on _____, 1986 and they replace the former Articles of Association).

INTERPRETATION

1. In these Articles the words standing in the first column of the table next Whereinafter contained shall bear the meanings set opposite them respectively in the second column thereof, if not inconsistent with the subject or context:

Words	**Meanings**
The Company	The above-named Company.
Companies Ordinance	The Companies Ordinance (new Version), 5743-1983 ("The Companies Ordinance"), as amended and as shall be amended from time to time including any law or statute replacing it.
The Law	The Government Companies Law, 5735-1975, as amended and as shall be amended from time to time including any law or statute replacing it.
Government Company	A company in which more than half of the voting power at general meetings or the right to appoint more than half the number of directors is held by the State of Israel or by the State of Israel together with a Government Company or a Government Subsidiary Company.

Words	Meanings
The Government	The Government of Israel on behalf of the State of Israel.
Government Subsidiary Company	A company in which more than half of the voting power at general meetings or the power to appoint more than half of the members of the board of directors is held by the Government, a government company (as defined in the Law), a Government Subsidiary Company or a Government Company together with a Government Subsidiary Company or with the State of Israel.
The Ministers	The Minister of Finance together with the Minister designated under the Law as responsible for the affairs of the Company.
The Committee	The Finance Committee of the Knesset.
The Authority	The Government Companies Authority as defined in the Law.
The ICL Concern	Israel Chemicals Ltd. and its subsidiary companies.

Words	Meanings
The Statutes	The Companies Ordinance, The Securities Law, 5728-1968, the Government Companies Law, 5735-1975, as amended and as shall be amended from time to time including any law or statute replacing it, and every other Ordinance or Law for the time being in force concerning joint stock companies and affecting the Company.
These Articles	These Articles of Association or as shall be altered from time to time by Special Resolution.
The Office	The registered office for the time being of the Company.
The Seal	The rubber stamp of the Company.
Month	Gregorian month.
The President	The General Manager of the Company as defined within the Law.

Words	Meanings
Officer	A Director, General Manager, Chief Executive Officer, Deputy General Manager, Vice General Manager, any other manager directly subordinate to the General Manager, and any person who fills one of the said positions in the Company, even if he carries a different title.
Writing	Printing, lithography, photography, and any other mode or modes of representing or reproducing words in a visible form.

Words importing the singular only shall include the plural, and vice versa.

Words importing the masculine gender shall include the feminine gender; and words importing person shall include corporations.

Subject as aforesaid, any words or expressions defined in the Statutes shall, except where the subject or context forbids, bear the same meanings in these Articles.

2. The Articles found in the Second Schedule to the Companies Ordinance shall not apply to the Company.

NON-PRIVATE COMPANY

3. The Company is a non-private company; consequently:

(1) No limitations, except for those arising out of the rights attached to the Special State Share, will apply to the transfer of its paid up shares;

(2) The number of shareholders is unlimited;

(3) The company may issue to the public shares, debentures or any other securities.

3A. The on-going management of the Company, control over its business and its principal place of business shall be in Israel.

Any change or amendment to or cancellation of this Article 3A shall be deemed to be a change in the rights attached to the Special State Share, and shall not be effected other than with the consent of the holder of the Special State Share. Every resolution or activity which is contrary to or not in accordance with this Article 3A shall be void and invalid without the consent of the holder of the Special State Share.

Any consent or waiver or approval by the holder of the Special State Share shall be in writing.

4. The share capital of the Company is 50,000,000 (Fifty Million) New Israeli Shekels, divided into 49,999,999 (Forty Nine Million Nine Hundred Ninety Nine Thousand Nine Hundred Ninety Nine) Ordinary Shares of a nominal value of 1 (One) New Israeli Shekel (NIS) each, all ranking pari-passu (hereinafter referred to as the "Ordinary Shares"), and One Share of a nominal value of (one) New Israeli Shekel (NIS) which is a special state share (hereinafter referred to as the "Special State Share"):

OVERRIDING EFFECT OF THE LAW

5. For so long as the Company is a Government Subsidiary Company or a Government Company, all of the provisions of the Law shall override any contrary provisions found herein.

These Articles will be interpreted, as far as possible, such that their provisions will not be inconsistent with the cogent provisions of the Law, insofar as the Law applies to the Company. In the event of an inconsistency between the

cogent provisions of the Law and the provisions of these Articles, then the cogent provisions of the Law will prevail.

SHARES

6. Subject to the provisions of the Law, and of these Articles or the terms of any resolution creating new shares, the unissued shares from time to time shall be under the control of the Board of Directors, who shall have the power to allot shares or otherwise dispose of them to such persons, on such terms and conditions, and either at par or at a premium, or, subject to the provisions of the Statutes, at a discount, and at such times, as the Board of Directors may think fit, and the power to give to any person the option to acquire from the Company any shares, either at par or at a premium, or, subject as aforesaid, at a discount, during such time and for such consideration as the Board of Directors may think fit.

7. If two or more persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividends or other moneys in respect of such share.

8. No person shall be recognized by the Company as holding any share upon any trust, and the Company shall not be bound by or required to recognize any equitable, contingent, future, or partial interest in any share or any right whatsoever in respect of any share other than an absolute right to the entirety thereof in the registered holder.

9. Every member shall be entitled without payment to receive within six months after allotment or registration of transfer (unless the conditions of issue provide for a longer interval) one certificate under the Seal for all the shares registered in his name, specifying the number and denoting numbers of the shares in respect of which it is issued and the amount paid up thereon. Provided that in the case of joint holders the Company shall not be bound to issue more than one certificate to all the joint holders, and delivery of such certificate to one of them shall be sufficient delivery to all.

Every certificate shall be signed by one Director and countersigned by the Secretary to the Company or some other person nominated by the Directors for the purpose.

10. If any share certificate shall be defaced, worn out, destroyed or lost, it may be renewed on such evidence being produced, and such indemnity (if any) being given as the Directors shall require and (in case of defacement or wearing out) on delivery up of the old certificate, and in any case on payment of such sum not exceeding NIS 5 (Five New Israeli Shekels) or as the Directors may from time to time require.

11. No part of the funds of the Company shall be employed in the purchase of or in loans upon the security of the Company's shares, but nothing in this Article shall prohibit the transactions mentioned in the proviso to Section 139 of the Companies Ordinance.

12. Where any shares are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a length period, the Company may pay interest on so much of such share capital as is for the time being paid up for the period, and subject to the conditions and restrictions mentioned in Section 140 of the Companies Ordinance, and may charge the sum so paid by way of interest to capital as part of the cost of the construction of the work or building or the provision of a plant.

13. The Company may pay a commission at a rate not exceeding ten percent of the price at which the shares or other securities are issued to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the Company, or other securities of the Company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the Company or other securities of the Company.

13A. The Ordinary Shares will be equal in rights, and will give the holders thereof the right to receive notices concerning the General Meetings of the Company, to participate and vote therein, to appoint the members of the Board of Directors as detailed hereinbelow, and to participate in the division of profits of the Company and the assets remaining after fulfillment by the Company of all its debts in the event of the winding-up of the Company.

13B. The Special State Share may not be sold or transferred from the State of Israel's name and shall confer upon its holder for the purpose of the safeguarding of the State's Vital Interests, as outlined below, the following rights:

(1) A Transfer, as defined below, other than in the ordinary course of the Company's business, shall be invalid without the consent of the holder of the Special State Share, who shall be entitled to object to a Transfer only if said Transfer may, in his opinion, prejudice one of the State's Vital Interests as outlined below:

In this Article each of the following shall constitute a "Transfer," whether effected at one time, in parts, in one transaction or in a series of transactions:

(a) A transfer or allotment of shares or other securities in the Company, including securities held by the Company in another corporate body, in consequence whereof another person shall hold more than 25% of the voting rights in the Company or said other corporate body, or in consequence whereof the control of the Company or said other corporate body is transferred or is likely to be transferred in the future to another holder;

(b) Should the Company cease to be a Government Subsidiary Company, a sale or transfer of the assets vital to the existence and development of the Company or maintenance of its production capacity or the granting of any right in aforesaid assets. These assets shall include the

following whether or not protected by patents or other intellectual property rights: production lines, including production facilities, mining and quarrying rights, marketing set-ups, know-how and technology.

(2) None of the following resolutions shall be valid without the consent of the holder of the Special State Share:

(a) resolutions as to voluntary liquidation;

(b) resolutions as to a compromise or arrangement pursuant to section 233 of the Companies Ordinance;

(c) resolutions as to an alteration to or reorganization of the Company's structure;

(d) resolutions as to a merger except for mergers of corporate bodies controlled by a company within the ICL Concern that do not prejudice the rights or powers of the holder of the Special State Shares.

(3) (a) Any acquisition or holding of shares in the Company of 14% or more of the Company's issued share capital shall not be valid vis-à-vis the Company unless the consent of the holder of the Special State Share has been received in respect thereof.

(b) Any acquisition or holding of shares in the Company of 25% or more of the Company's issued share capital (including the augmentation of an existing holding up to 25%) shall not be valid vis-à-vis the Company unless the consent of the holder of the Special State Share has been received in respect thereof even if consent in accordance with Article 13B(3)(a) above was previously received in respect of a holding of less than 25%.

(c) In addition to the foregoing, the consent of the holder of the Special State Share shall be required for each portion of a shareholding in the share capital of the Company which confers upon the holder thereof the right, or actual or potential ability to appoint directly or indirectly a number of

directors in the Company constituting half or more of the members of the Board of Directors of the Company as hold office from time to time. The holding of a portion of the share capital in respect of which the consent of the holder of the Special State Share as aforesaid is required, shall not be valid vis-à-vis the Company until such time as consent as aforesaid has been received.

(d) The holder of the Special State Share shall be entitled to make his consent pursuant to this Article 13B(3) subject to any conditions which he deems necessary to secure the State's Vital Interests. Furthermore, he shall be entitled to waive any of the rights conferred upon him pursuant to these Articles upon terms and conditions he shall determine, in respect of a particular shareholder, for a fixed period or permanently. Any waiver as aforesaid shall not be deemed a change to or amendment of these Articles or of the rights attached to the Special State Share.

(e) Any transaction creating a charge over and/or pledge of and/or encumbrance of shares in the Company which confers on the chargee or pledgee rights as a result of the exercise or operation of which said chargee or pledgee may hold shares in the Company's share capital in the percentages set forth in Articles 13B(3)(a), 13B(3)(b) and 13B(3)(c) inclusive, or increase his holdings to the said percentages, shall not be valid without the consent of the holder of the Special State Share, and all the provisions of this Article 13B(3) in relation to a transaction shall apply mutatis mutandis to said charge and/or pledge.

(4) The holder of the Special State Share shall be entitled, upon his demand, to receive from the Company all information and documents which a holder of Ordinary Shares of the Company is entitled to receive, and in addition thereto he shall be entitled to receive all information and documents which a Director is entitled to receive or which a Public Director is entitled to receive pursuant to Section 96(12) of the

Companies Ordinance. All information which the Company's General Meeting receives or is entitled to receive shall be given to the holder of the Special State Share prior to convening the General Meeting. The holder of the Special State Share shall use such information only in order to exercise his rights under these Articles for the purpose of safeguarding the State's Vital Interests.

(5) Any person who requests the consent of the holder of the Special State Share in respect of any of the matters requiring said consent according to these Articles shall make said request in writing to the holder of the Special State Share, and include in said request all the information necessary to make a decision regarding the giving of consent.

(6) The holder of the Special State Share shall be deemed to have given his consent to the operations mentioned in Articles 13B(1), 13B(2) and 13B(3)(d) hereof, if at the end of 90 days from the date on which he was requested in writing to give his consent, he has not expressly withheld his consent, unless one of the Ministers holding the Special State Share seeks to raise the matter for discussion in the Government within said 90 day period.

(7) Any consent or waiver or approval by the holder of the Special State Share shall be in writing. Any refusal, waiver or consent by the holder of the Special State Share will be valid from the time it is given unless expressly stated otherwise.

(8) The State's Vital Interests are:

(a) Preservation of the character of the Company as an Israeli company whose center of business and management is in Israel.

(b) Supervision of the control of quarries and natural resources for their efficient development and exploitation, including maximum application in Israel of the results of the investments, research and development.

(c) Prevention of the achievement of a position of influence in the Company by hostile elements or elements which may prejudice the State's foreign and defense interests.

(d) Prevention of the achievement of a position of influence in the Company or the management of the Company where such acquisition or management could create a material conflict of interest which may prejudice one of the vital interests particularized in sub-paragraphs (a), (b) and (c) above.

(9) In this Article and in Article 18 hereof, "holding" and "acquisition" of shares, "control" and "affiliate" shall have the meaning ascribed to these terms in Section 1 of the Securities Law, 5728-1968, provided that "holding" shall include a holding by shareholders operating in concert or together or in cooperation, although in measuring the holding of a shareholder, his holding by means of an affiliate, whose securities have been offered to the public, shall not be taken into account if the affiliate is not in the sole control of said shareholder or in the control of said shareholder together with other parties who hold securities of the Company.

(10) The rights specified in this Article 13B and in Article 18 hereof are the rights attached to the Special State Share, and, other than these rights, no voting rights or capital rights are attached to the Special State Share.

Every change in these Articles which is likely to affect, directly or indirectly, the rights attached to the Special State Share shall be deemed to be a change in the rights attached to the Special State Share. Every resolution or activity which is likely to affect, directly or indirectly, the rights attached to the Special State Share shall require the consent of the holder of the Special State Share, and shall be void and invalid unless the consent of the holder of the Special State Share has been obtained.

Any change or amendment to or cancellation of this Article 13B shall be deemed to be a change in the rights attached to the Special State Share, and shall not be effected other than with the consent of the holder of the Special State Share. Every resolution or activity which is contrary to or not in accordance with this Article 13B shall be void and invalid without the consent of the holder of the Special State Share.

Any consent or waiver or approval by the holder of the Special State Share shall be in writing.

THE COMPANIES ORDINANCE

COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

BROMINE COMPOUNDS LTD.

THE COMPANIES ORDINANCE
COMPANY LIMITED BY SHARES
ARTICLES OF ASSOCIATION
of
BROMINE COMPOUNDS LTD.

(These Articles Association have been adopted by a Special Resolution on February __, 1992, and they replace the former Articles of Association).

INTERPRETATION

1. In these Articles the words standing in the first column of the table next Whereinafter contained shall bear the meaning set opposite them respectively in the second column thereof, if not inconsistent with the subject or context:

Words	**Meanings**
The Company	The above-named Company.
Companies Ordinance	The Companies Ordinance (new Version), 5743-1983 ("The Companies Ordinance"), as amended and shall be amended from time to time including any law or statute replacing it.
The Law	The Government Companies Law, 5735-1975, as amended and as shall be amended from time to time including any law or statute replacing it.

Government Company	A company in which more than half of the voting power at general meetings or the right to appoint more than half the number of directors is held by the State of Israel or by the State of Israel together with a Government Company or a Government Subsidiary Company.
The Government	The Government of Israel on behalf of the State of Israel.
Government Subsidiary Company	A company in which more than half of the voting power at general meetings or the power to appoint more than half of the members of the board of directors is held by the Government, a government company (as defined in the Law), a Government Subsidiary Company or a Government Company together with a Government Subsidiary Company or with the State of Israel.
The Ministers	The Minister of Finance together with the Minister designated under the Law as responsible for the affairs of the Company.
The Committee	The Finance Committee of the Knesset.
The Authority	The Government Companies Authority as defined in the Law.

The ICL Concern	Israel Chemicals Ltd. and its subsidiary companies.
The Statutes	The Companies Ordinance, the Securities Law, 5728-1968, the Government Companies Law, 5735-1975, as amended and as shall be amended from time to time including any law or statute replacing it, and every other Ordinance or Law for the time being in force concerning joint stock companies and affecting the Company.
These Articles	These Articles of Association or as shall be altered from time to time by Special Resolution.
The Office	The registered office for the time being of the Company.
The Seal	The rubber stamp of the Company.
Month	Gregorian month.
The President	The General Manager of the Company as defined within the Law.
Officer	A Director, General Manager, Chief Executive Officer, Deputy General Manager, Vice General Manager, any other manager directly subordinate to the General Manager, and any person who fills one of the said positions in the Company, even it he carries a different title.

Writing	Printing, lithography, photography, and any other mode or modes of representing or reproducing words in a visible form.

Words importing the singular only shall include the plural, and vice versa.

Words importing the masculine gender shall include the feminine gender; and words importing person shall include corporations.

Subject as aforesaid, any words or expressions defined in the Statutes shall, except where the subject or context forbids, bear the same meanings in these Articles.

2. The Articles found in the Second Schedule to the Companies Ordinance shall not apply to the Company.

PRIVATE COMPANY

3. The Company is a private company and accordingly:

(a) The number of members for the time being of the Company (exclusive of persons who are in the employment of the Company and persons who having been formerly in the employment of the Company were, while in such employment, and have continued after such employment to be, members of the Company) is not to exceed fifty (50), but where two (2) or more persons hold one (1) or more share(s) in the Company jointly, they shall, for the purposes of this paragraph, be treated as a single member;

(b) Any invitation to the public to subscribe for any shares or debentures or debenture stock of the Company is hereby prohibited:

(c) The right of transfer of shares shall be restricted as hereinafter provided.

3A. The on-going management of the Company, control over its business and its principal place of business shall be in Israel.

Any change or amendment to or cancellation of this Article 3A shall be deemed to be a change in the rights attached to the Special State Share, and shall not be effected other than with the consent of the holder of the Special State Share. Every resolution or activity which is contrary to or not in accordance with this Article 3A shall be void and invalid without the consent of the holder of the Special State Share.

Any consent or waiver or approval by the holder of the Special State Share shall be in writing.

4. The share capital of the company is 70,200,000.0001 (Seventy Million, Two Hundred Thousand and One Ten Thousandth) New Israeli Shekels, divided into 390,000,000 (Three Hundred and Ninety Million) Ordinary Shares of nominal value of 0.18 (Eighteen One Hundredths) New Israeli Shekel (NIS) each, all ranking pari-passu (hereinafter referred to as the "Ordinary Shares"), and One Share of a nominal value of 0.0001 (One Ten Thousandth) New Israeli Shekel (NIS) which is a special state share (hereinafter referred to as the "Special Sate Share").

OVERRIDING EFFECT OF THE LAW

5. For so long as the Company is a Government Subsidiary Company or a Government Company, all of the provisions of the Law shall override any contrary provisions found herein.

These Articles will be interpreted, as far as possible, such that their provisions will not be inconsistent with the cogent provisions of the Law, insofar as the Law applies to the Company. In the event of an inconsistency between the cogent provisions of the Law and the provisions of these Articles, then the cogent provisions of the Law will prevail.

SHARES

6. Subject to the provisions of the Law, and of these Articles or the terms of any resolution creating new shares, the unissued shares from time to time shall be under the control of the Board of Directors, who shall have the power to allot shares or otherwise dispose of them to such persons, on such terms and conditions, and either at par or at a premium, or, subject to the provisions of the Statutes, at a discount, and at such times, as the Board of Directors may think fit, and the power to give to any person the option to acquire from the Company any shares, either at par or at a premium, or, subject as aforesaid, at a discount, during such time and for such consideration as the Board of Directors may think fit.

7. If two or more persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividends or other moneys in respect of such share.

8. No person shall be recognized by the Company as holding any share upon any trust, and the Company shall not be bound by or required to recognize any equitable, contingent, future, or partial interest in any share or any right whatsoever in respect of any share other than an absolute right to the entirety thereof in the registered holder.

9. Every member shall be entitled without payment to receive within six months after allotment or registration of transfer (unless the conditions of issue provide for a longer interval) one certificate under the Seal for all the shares registered in his name, specifying the number and denoting numbers of the shares in respect of which it is issued and the amount paid up thereon. Provided that in the case of joint holders the Company shall not be bound to issue more than one certificate to all the joint holders, and delivery of such certificate to one of them shall be sufficient delivery to all. Every certificate shall be signed by one Director and countersigned by the Secretary to the Company or some other person nominated by the Directors for the purpose.

10. If any share certificate shall be defaced, worn out, destroyed or lost, it may be renewed on such evidence being produced, and such indemnity (if any) being given as the Directors shall require and (in case of defacement or wearing out) on delivery up of the old certificate, and in any case on payment of such sum not exceeding NIS 5 (Five New Israeli Shekels) or as the Directors may from time to time require.

11. No part of the funds of the Company shall be employed in the purchase of or in loans upon the security of the Company's shares, but nothing in this Article shall prohibit the transactions mentioned in the proviso to Section 139 of the Companies Ordinance.

12. Where any shares are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a length period, the Company may pay interest on so much of such share capital as is for the time being paid up for the period, and subject to the conditions and restrictions mentioned in Section 140 of the Companies Ordinance, and may charge the sum so paid by way of interest to capital as part of the cost of the construction of the work or building or the provision of a plant.

13. The Company may pay a commission at a rate not exceeding ten percent of the price at which the shares or other securities are issued to any person in consideration of his subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the Company, or other securities of the Company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the Company or other securities of the Company.

13A. The Ordinary Shares will be equal in rights, and will give the holders thereof the right to receive notices concerning the General Meetings of the Company, to participate and vote therein, to appoint the members of the Board of Directors as detailed hereinbelow, and to participate in the division of

profits of the Company and the assets remaining after fulfillment by the Company of all its debts in the event of the winding-up of the Company.

13B. The Special State Share may not be sold or transferred from the State of Israel's name and shall confer upon its holder, for the purpose of the safeguarding of the State's Vital Interests, as outlined below, the following rights:

(1) A Transfer, as defined below, other than in the ordinary course of the Company's business, shall be invalid without the consent of the holder of the Special State Share, who shall be entitled to object to a Transfer only if said Transfer may, in his opinion, prejudice one of the State's Vital Interests as outlined below.

In this Article each of the following shall constitute a "Transfer", whether effected at one time, in parts, in one transaction or in a series of transactions:

(a) A transfer or allotment of shares or other securities in the Company, including securities held by the Company in another corporate body, in consequence whereof another person shall hold more than 25% of the voting rights in the Company or said other corporate body, or in consequence whereof the control of the Company or said other corporate body is transferred or is likely to be transferred in the future to another holder;

(b) Should the Company cease to be a Government Subsidiary Company, a sale or transfer of the assets vital to the existence and development of the Company or maintenance of its production capacity or the granting of any right in aforesaid assets. These assets shall include the following whether or not protected by patents or other intellectual property rights: production lines, including production facilities, mining and quarrying rights, marketing set-ups, know-how and technology.

(2) None of the following resolutions shall be valid without the consent of the holder of the Special State Share:

(a) resolutions as to voluntary liquidation;

(b) resolutions as to a compromise or arrangement pursuant to section 233 of the Companies Ordinance;

(c) resolutions as to an alteration to or reorganization of the Company's structure;

(d) resolutions as to a merger except for mergers of corporate bodies controlled by a company within the ICL Concern that do not prejudice the rights or powers of the holder of the Special State Share.

(3) (a) Any acquisition or holding of shares in the Company of 14% or more of the Company's issued share capital shall not be valid vis-à-vis the Company unless the consent of the holder of the Special State Share has been received in respect thereof.

(b) Any acquisition or holding of shares in the Company of 25% or more of the Company's issued share capital (including the augmentation of an existing holding up to 25%) shall not be valid vis-à-vis the Company unless the consent of the holder of the Special State Share has been received in respect thereof even if consent in accordance with Article 13B(3)(a) above was previously received in respect of a holding of less than 25%.

(c) In addition to the foregoing, the consent of the holder of the Special State Share shall be required for each portion of a shareholding in the share capital of the Company which confers upon the holder thereof the right, or actual or potential ability to appoint directly or indirectly a number of directors in the Company constituting half or more of the members of the Board of Directors of the Company as hold office from time to time. The holding of a portion of the share capital in respect of which the consent of the holder of the Special State

Share as aforesaid is required, shall not be valid vis-à-vis the Company until such time as consent as aforesaid has been received.

(d) The holder of the Special State Share shall be entitled to make his consent pursuant to this Article 13B(3) subject to any conditions which he deems necessary to secure the State's Vital Interests. Furthermore, he shall be entitled to waive any of the rights conferred upon him pursuant to these Articles upon terms and conditions he shall determine, in respect of a particular shareholder, for a fixed period or permanently. Any waiver as aforesaid shall not be deemed a change to or amendment of these Articles or of the rights attached to the Special State Share.

(e) Any transaction creating a charge over and/or pledge of and/or encumbrance of shares in the Company which confers on the chargee or pledgee rights as a result of the exercise or operation of which said chargee or pledgee may hold shares in the Company's share capital in the percentages set forth in Articles 13B(3)(a), 13B(3)(b) and 13B(3)(c) inclusive, or increase his holdings to the said percentages, shall not be valid without the consent of the holder of the Special State Share, and all the provisions of this Article 13B(3) in relation to a transaction shall apply mutatis mutandis to said charge and/or pledge.

(4) The holder of the Special State Share shall be entitled, upon his demand, to receive from the Company all information and documents which a holder of Ordinary Shares of the Company is entitled to receive, and in addition thereto be shall be entitled to receive all information and documents which a Director is entitled to receive or which a Public Director is entitled to receive pursuant to Section 96(12) of the Companies Ordinance. All information which the Company's General Meeting receives or is entitled to receive shall be given to the holder of the Special State Share prior to convening the General Meeting. The holder of the Special

State Share shall use such information only in order to exercise his rights under these Articles for the purpose of safeguarding the State's Vital Interests.

(5) Any person who requests the consent of the holder of the Special State Share in respect of any of the matters requiring said consent according to these Articles shall make said request in writing to the holder of the Special State Share, and include in said request all the information necessary to make a decision regarding the giving of consent.

(6) The holder of the Special State Share shall be deemed to have given his consent to the operations mentioned in Articles 13B(1), 13B(2) and 13B(3)(d) hereof, if at the end of 90 days from the date on which he was requested in writing to give his consent, he has not expressly withheld his consent, unless one of the Ministers holding the Special State Share seeks to raise the matter for discussion in the Government within said 90 day period.

(7) Any consent or waiver or approval by the holder of the Special State Share shall be in writing. Any refusal, waiver or consent by the holder of the Special State Share will be valid from the time it is given unless expressly stated otherwise.

(8) The State's Vital Interests are:

(a) Preservation of the character of the Company as on Israeli company whose center of business and management is in Israel.

(b) Supervision of the control of quarries and natural resources for their efficient development and exploitation, including maximum application in Israel of the results of the investments, research and development.

(c) Prevention of the achievement of a position of influence in the Company by hostile elements or elements which may prejudice the State's foreign and defense interest.

(d) Prevention of the achievement of a position of influence in the Company or the management of the Company where such acquisition or management could create a material conflict of interest which may prejudice one of the vital interests particularized in sub-paragraphs (a), (b) and (c) above.

(9) In this Article and in Article 18 hereof, "holding" and "acquisition" of shares, "control" and "affiliate" shall have the meaning ascribed to these terms in Section 1 of the Securities Law, 5728-1968, provided that "holding" shall include a holding by shareholders operating in concert or together or in cooperation, although in measuring the holding of a shareholder, his holding by means of an affiliate, whose securities have been offered to the public, shall not be taken into account if the affiliate is not in the sole control of said shareholder or in the control of said shareholder together with other parties who hold securities of the Company.

(10) The rights specified in this Article 13B and in Article 18 hereof are the rights attached to the Special State Share, and, other than these rights, no voting rights or capital rights are attached to the Special State Share.

Every change in these Articles which is likely to affect, directly or indirectly, the rights attached to the Special State Share shall be deemed to be a change in the rights attached to the Special State Share. Every resolution or activity which is likely to affect, directly or indirectly, the rights attached to the Special State Share shall require the consent of the holder of the Special State Share, and shall be void and invalid unless the consent of the holder of the Special State Share has been obtained.

Any change or amendment to or cancellation of this Article 13B shall be deemed to be a change in the rights attached to the Special State Share, and shall not be effected other than with the consent of the holder of the Special State Share. Every resolution or activity which is contrary to or not in

accordance with this Article 13B shall be void and invalid without the consent of the holder of the Special State Share.

CALLS ON SHARES

14. No member shall be entitled to receive any dividend or to exercise any privileges as a member until he shall have paid all calls for the time being due and payable on every share held by him, whether alone or jointly with any other person, together with interest and expenses (if any).

15. (a) If under the conditions of the issuance of shares there is no fixed date for the payments due therefor, the Directors may from time to time make such calls upon the members in respect of all moneys then unpaid on shares possessed by them and every member will pay the sum demanded of him at the place and time appointed by the Directors, provided that fourteen days notice as to the place and date of payment was served on him. The Directors may revoke or postpone any call.

(b) A call shall be deemed to have been made at the time when the Resolution of the Directors authorizing such call was passed.

(c)The joint holders of a share shall be jointly and severally liable for the payment of all calls and installments in respect thereof.

(d) If before or on the day appointed for payment thereof, a call or installment payable in respect of a share is not paid, the holder or allottee of the share shall pay interest on the amount of the call or installment at such rate not exceeding the debitory rate prevailing at the largest Israeli commercial bank on the day appointed for the payment referred to, as the Directors shall fix, from the day appointed for payment thereof to the time of actual payment, but the Directors may waive payment of such interest wholly or in part.

(No. 56)

DEAD SEA CONCESSION LAW, 5721-1961*

The Concession.

I. The Deed of Concession set out in the Schedule to this Law, made between the State and the Concessionaire specified therein, shall be deemed to be valid for all its purposes notwithstanding anything provided in any law.

Subconcessions.

2. Any subconcession which may be granted under the provisions of clause 5 of the Deed of Concession shall be published in *Reshumos* and upon being so published shall be deemed to be valid for all its purposes notwithstanding anything provided in any law.

Implementation.

3. The Minister of Finance and Development are charged with the implementation of this Law.

SCHEDULE

THIS DEED OF CONCESSION is made this 31st day of May, 1961, between the STATE OF ISRAEL represented by the Government of Israel, acting through the Minister of Finance and the Minister of Development (hereinafter referred to as "Government") of the one part, and MIFALEI YAM HAMELAH B. M. (Dead Sea Works Limited), a company incorporated under the laws of Israel, whose registered office is situate at Potash House Beersheba (hereinafter referred to as "the Concessionaire") of the other part.

---

* Passed by the Knesset on the 16th Sivan, 5721 (31st May, 1961) and published in *Sefer Ha-Chukkim* No. 342 of the 27th Sivan, 5721 (11th June, 1961), p. 130.

WHEREAS: —

(A) The minerals of the Dead Sea and the surrounding area form part of the natural resources of the State of Israel, and it is desirable to regulate the efficient exploitation thereof in the interests of the economy of the State;

(B) The Concessionaire was incorporated with the object, among others, of examining, exploring and developing the natural mineral resources of the Dead Sea and the surrounding areas;

(C) The Concessionaire has since its incorporation been developing and exploiting some of the said natural mineral resources and has in connection therewith acquired and built in and in the vicinity of the southern part of the Dead Sea certain works and facilities;

(D) The Concessionaire has applied to Government for the Concession hereinafter appearing, and Government is prepared to grant the same to the Concessionaire on the terms and conditions hereinafter set forth;

NOW THEREFORE THIS DEED OF CONCESSION WITNESSETH, AND IT IS HEREBY AGREED AND DECLARED, as follows:—

Interpretation.

I. Unless the context otherwise requires the following words and expressions shall have the following meanings set out opposite thereto, that is to say: —

The auditor	The auditor or auditors for the time being of the Concessionaire.
Commencement date	The date on which the law approving the Concession shall come into force.
Concession	The Concession granted by this Deed of Concession.

Concessionaire	Dead Sea Works Limited and its successors under this deed of concession.
Dead Sea	(a) The waters and bed of that Part of the Dead Sea lying within the frontiers of the State of Israel, as shown on map "A" attached to this Deed of Concession[1]) and signed by the parties thereto and forming an integral part thereof; (b) The evaporation area shown on the said map "A" and thereon delineated and hatched black; and (c)The strip of shore bounded: on the north by Co-ordinate line 100, and on the south by the said evaporation area and on the east by the water line as shown on the said map "A" and on the west by an imaginary line running parallel to such water line at a distance of 150 metres therefrom.
Fused tangible assets	Lands, buildings, plant, machinery, dams, dykes, evaporation pans, sluices, gates, pumping stations, flood protection works, pipes and fixtures and other equipment of every nature forming part of the Undertaking and situate in the leased lands, the reserved lands or the Dead Sea.
Land	includes any right, interest, easement or incumbrance in or over land.
Leased lands	The lands for the time being leased to the Concessionaire under Clause 6 of this Deed.

---

[1] A copy of this map is included in the Hebrew text but is not reproduced in this translation — Tr.

Local authority	Includes municipal corporation, local council, regional council and any other local body entitled to levy any local rates.
Local rates	Any rate or tax which will at any rime be imposed by a local authority in connection with the business of the Undertaking, its property or income (except governmental taxes, rates, charges and compulsory payments).
The Minister	The Ministers of Finance and Development.
Month	A Gregorian calendar month.
Reserved lands	The lands shown on the said map "A" and thereon cross-hatched in thick black lines.
Ton	Metric ton of 1000 kilograms.
The Undertaking	The business of obtaining, rendering marketable, selling and disposing of mineral salts, minerals and chemicals and all businesses, property and things as shall be necessary or incidental thereto, all in accordance with this Concession.
Year	A period of twelve consecutive months.

Grant of Concession.

2. Government hereby grants to the Concessionaire the following Concession, namely,

(a) The exclusive right to obtain by evaporation (solar or artificial), cooling, mining, quarrying or otherwise howsoever, the mineral salts, minerals and chemicals, whether in solution or solid form, in and beneath the Dead Sea, and to render marketable, sell and dispose of the same;

(b) the exclusive right, subject to any rights existing at the date of this Deed, and subject to the provisions of Clause 3(3)

hereof, to execute, enlarge, alter, maintain and pull down, any works in and beneath the Dead Sea, including, but without derogating from the generality of the foregoing, dykes, evaporation pans, sluices, gates, pumping stations, canals, pipes, power transmission lines and cables, roads, flood-protection works, wells, bores and other facilities together with the exclusive right of access to such works and user thereof;

(c) the right to navigate vessels on the Dead Sea for the purposes of the Undertaking, subject to the laws for the time being in force;

(d) the right, with the approval of the Competent Authority and subject to the rights existing at the date of this Deed and subject to any right which will be granted after such date under Clause 9(1) (b) of this Deed, to do all or any of the following acts in the leased lands and the reserved lands: —

(i) to obtain by quarrying, mining or any other means of extraction howsoever, dolomite rocks and such other rocks and such mineral salts, minerals and chemicals as the Concessionaire may from time to time require for use in any process employing mineral salts, minerals and chemicals obtained or obtainable from the Dead Sea, and to quarry for rock salt in and about Mount Sdom; and

(ii) to quarry for materials necessary for constructing, enlarging and maintaining the Undertaking;

The Competent Authority shall not refuse to give its approval under this sub-clause and the same shall be granted within 30 days of the submission of the application therefor;

(e) the right, subject to the approval of the competent water authority, which approval shall not be unreasonably withheld or delayed, to obtain fresh or brackish water required for the production of mineral salts, minerals and chemicals for drinking, washing or sanitary purposes and the general

purposes of the Undertaking and of the employees of the Concessionaire from streams or springs flowing through or rising in the leased lands and the reserved lands or from wells situated therein or from any affluents to the Dead Sea and to bore for fresh or brackish water in the leased lands and the reserved lands, and in connection therewith to sink wells, lay pipes, construct pumping stations and such other works as shall be necessary or incidental thereto.

Exceptions and reservations.

3. (1) There are excepted and reserved to Government, out of the grant hereinbefore contained —

(a) gold, silver or other precious metals and their ores, precious stones, copper and iron ores, antiquities and petroleum as defined in the Petroleum Law, 5712-1952 (hereinafter collectively referred to as "the excepted substances"), in or beneath the Dead Sea, the leased lands or the reserved lands;

(b) the right to enter upon any facilities and property of the Concessionaire in or beneath the Dead Sea, the leased lands or the reserved lands for the purpose of making any surveys or inspections in connection with the matters stated in Sub-Clause 1(a) of this Clause.

(2) The Concessionaire shall forthwith upon the discovery of any of the excepted substances, give Government notice of such discovery, and shall permit Government or any person authorized by it to enter upon any place as mentioned in Sub-Clause 1(b) for the purpose of exploring for and obtaining the excepted substances and Government shall pay the Concessionaire compensation for any damage thereby occasioned to the Concessionaire.

(3) Government shall be entitled to permit any person to erect on the strip of shore referred to in sub-paragraph (c) of the definition of Dead Sea, any works, not relating to the

Undertaking, PROVIDED THAT such works shall not interfere or compete with the Undertaking or the development thereof.

Before permitting any such works as aforesaid, Government shall give to the Concessionaire not less than four months prior notice in writing of its intention, and shall set out in such notice the location and area of the said strip of shore in respect of which Government proposes to grant such permit, and the nature of the work to be carried out thereon, and the Concessionaire shall be entitled within four months from receipt of such notice, to notify Government in writing that the Concessionaire objects to the granting of the proposed permission and the reasons for its objection, and in the event that Government will reject any such objection the matter shall before the grant of any such permission, be referred to and determined by arbitration in pursuance of Clause 26 hereof. If the Concessionaire does not notify Government that it objects to the granting of the permission within four months from receipt of the said notice, the Concessionaire will be deemed to have agreed to the granting of the permission.

Duration of Concession.

4. The duration of this Concession shall be for a period commencing on the day on which the law approving the Concession shall come into force, and terminating on the 14th Nisan, 5759 (31st March, 1999).

Sub-concession and licences.

5. (a) the Concessionaire shall have the right, with the consent of Government and the approval of the Finance Committee of the Knesset, to grant sub-concessions under the Concession.

(b) In the event that the Concessionaire grants in accordance with the terms hereof any sub-concession, the sub-concessionaire shall, subject to the provisions of the sub-concession, have all the rights, privileges, powers and immunities, duties and obligations of the Concessionaire to the

extent granted or imposed upon the Sub-Concessionaire in such sub-concession, all within the framework of this Deed of Concession.

Lands.

6. (a) Government hereby leases to the Concessionaire for the duration of the Concession the lands shown in map "A" and thereon coloured black on the terms and conditions hereinafter set out.

(b) The rental to be paid in respect of the lands mentioned in Sub-Clause (a) of this Clause shall be 1L. 10. — in respect of the whole of the first ten years of the lease (which shall be payable on demand of Government), and thereafter shall be a fair rental based on the value of the said lands, disregarding any increase in their value due to the operations or requirements of the Concessionaire. The said rental for the period after the expiry of the first ten years of the lease shall be paid yearly in arrear on the anniversary date of the Concession.

(c) Government shall wherever so required by the Concessionaire, lease or cause the Development Authority or the Israel Lands Authority to lease to the Concessionaire any part of the reserved lands required for the Undertaking being lands vested in the State or the Development Authority for the unexpired period of the Concession. During the first ten years from the commencement date, the rental to be paid in respect of such lands shall be nominal and thereafter shall be a fair rental based on the value of such lands, disregarding any increase in land value due to the operations or requirements of the Concessionaire and on the terms, *mutatis mutandis*, applicable to the lands mentioned in Sub-Clause (a) of the Clause.

(d) The Concessionaire shall use the leased lands exclusively for the purposes of the Undertaking.

(e) There are excepted out of the lease granted under this Clause all public roads passing through the leased lands.

(f) If at the expiration of the first ten years from the commencement date it shall transpire that the Concessionaire does not reasonably require the whole of any such lands comprised in any lease granted under sub-clause (c) hereof for the purposes of the Undertaking, having regard to the production capacity of the Undertaking at such time, Government shall be entitled at any time thereafter to require the Concessionaire, by giving not less than twelve months prior notice in writing to that effect, to surrender such unrequired part. No such surrender shall, however, prevent the Concessionaire from subsequently requiring Government to lease or cause to be leased such lands to the Concessionaire in accordance with sub-clause (c) of this Clause.

(g) Lands within the reserved lands which may from time to time be required for the Undertaking, not being lands vested in Government or the Development Authority, shall be acquired by private treaty between the Concessionaire and the persons entitled to such land, and failing agreement, such land shall be expropriated by the Minister of Finance in accordance with the provisions of the Land (Acquisition for Public Purposes) Ordinance, 1943.

(h) Where land is acquired by private treaty or expropriation as specified in sub-clause (g) of this Clause, the price thereof or the compensation therefor shall be paid by the Concessionaire and the title to such land shall be vested in the Concessionaire.

(i) The Concessionaire shall be entitled to grant sub-leases or licences in respect of any of the lands leased to it under this Deed of Concession to any sub-concessionaire in pursuance of Clause 5 hereof, or with the consent of Government to others.

Registration of lands.

7. Government shall as soon as possible cause the registration in the name of the Concessionaire at the competent Land Registry of leases in respect of lands for the time being leased in pursuance of Clause 6 hereof. It is, however, hereby declared that any such lease shall be valid notwithstanding the failure to effect registration thereof as aforesaid. PROVIDED THAT the Concessionaire shall, within 30 days of the receipt from Government of a notice to that effect, appear at the competent Land Registry and execute all such documents as may be necessary to effect such registration. The registration aforesaid and the issue of certificates of registration in respect thereof to the Concessionaire shall be effected free of registration fees and any other imposts whatsoever.

Mortgage of leased lands.

8. The Concessionaire shall not be entitled to create any mortgage or fixed charge on the leasehold interest in the leased lands without the prior or consent in writing of the Minister. Any mortgage or charge created with such consent as aforesaid in respect of any leased lands as aforesaid not registered in the Land Registry shall, notwithstanding such non-registration, be valid, PROVIDED THAT the mortgage is duly registered in accordance with Section 127 of the Companies Ordinance and PROVIDED FURTHER that the holder of such mortgage or charge shall, within three months from receiving notice from Government of the registration of such lands in the competent Land Registry apply to such Land Registry for the registration of such mortgage or charge.

Reserved Lands.

9. (1) Government shall not, during the period of the Concession -

(a) grant to any person other than the Concessionaire possession or licence of land in the reserved lands without first offering the same to the Concessionaire on the terms provided in Clause 6(c) hereof; nor

(b) grant in or over the reserved lands to any person, other than the Concessionaire, any right, licence or concession for the mining or exploration by other means of any of the mineral salts, minerals and chemicals obtainable from the Dead Sea, without first offering such right, licence or concession to the Concessionaire. If such offer shall not be accepted by the Concessionaire within eighteen months after the same shall have been communicated to the Concessionaire, Government shall be at liberty to grant such right, licence or concession to such other person on terms not more favourable than those offered to the Concessionaire. PROVIDED THAT no such right or licence or concession as aforesaid shall be granted by Government to such other person as aforesaid if such grant will have a negative or adverse influence on the interests or business of the Undertaking or of that of any sub-concessionaire of the Concessionaire relating to the Concession or sub-concession; nor

(c) grant to any person other than the Concessionaire, any right, licence or concession for the extraction of rock salt in the leased lands or the reserved lands, save only to such persons who were entitled so to do on the date of the Concession, and with regard to such persons the Government shall be entitled to renew their licences, concession or rights or in lieu thereof to give to them new licences, concession or rights as aforesaid, without having first to offer such rights, licences or concessions to the Concessionaire. In such event the provisions of paragraph (b) of this sub-section, including the proviso at the end thereof, shall *mutatis mutandis* apply.

(2) The Concessionaire shall be entitled, with the approval of Government, to dispose of any waste products formed in the course of operating the Undertaking to a suitable place in the reserved lands.

Quiet enjoyment during Concession period.

10. The Concessionaire shall, during the period of the Concession, enjoy absolute and undisturbed possession of the Undertaking nor shall the Undertaking be compulsorily acquired, requisitioned or taken possession of by any other compulsory means.

Public works.

11. Nothing in this Deed contained shall prevent Government or any local authority from carrying out nor shall it prevent Government from permitting any other body authorised by law to carry out such works, to carry out in, over or beneath the leased lands or reserved lands any public works, including public roads, railways, electric wires or cables, bridges, pipes and pipelines, PROVIDED ALWAYS that—

(i) the public works so carried out shall not unreasonably interfere with the carrying out of works required for the Undertaking, nor the proper and normal functioning of the Undertaking; and

(ii) all necessary precautions shall be taken by whoever will carry out the public works so as to prevent damage to the Undertaking or any property belonging to or in the possession or control of the Concessionaire; and

(iii) Government or the local authority or whoever will carry out the public works, as the case may be, shall indemnify the Concessionaire against any loss or expense which the Concessionaire may sustain as a result of or in connection with the carrying out of such public works.

Before carrying out or permitting the carrying out of any such works, Government or the local authority shall give the Concessionaire prior written notice of not less than 90 days of its intention and shall attach thereto the plans of such works. The said notice shall specify the location of such works and the manner in which it is proposed to fulfill the conditions set out in the sub-clauses (i) and (ii) of this Clause. The Concessionaire shall inform Government in writing within 90 days from the date of the delivery of the said notice whether it objects to the carrying out of the public works and the reasons for its objections, and in the event that Government will reject such objections, the matter shall be referred to and determined by arbitration in pursuance of Clause 26 hereof before the carrying out of the said works as aforesaid. If the Concessionaire does not give notice of its objection within 90 days from the date of receipt of the said notice, the Concessionaire shall be deemed to have agreed to the carrying out of the works or to the granting of the permission for the carrying out of the same.

Concessionaire's duty to work.

12. The Concessionaire shall, during the period of the Concession, with all due diligence, continue to work and extract the said mineral salts, minerals and chemicals, and to get, win, carry away and market the same in accordance with the provisions of this Concession and increase within a reasonable time the capacity of the Undertaking for the production of potassium chloride by an additional 400,000 tons approximately per year above its present capacity of 165,000 tons per year.

Subject to the Concessionaire being able to provide the necessary moneys from internally generated funds and otherwise, on reasonable terms, it shall at a later stage use its best efforts further to increase the capacity of the Undertaking for the production of potassium chloride by an additional 200,000 to 300,000 tons approximately per year.

Products not produced by Concessionaire.

13. (a) If at any time after the expiry of three years from the commencement date Government shall desire the Concessionaire to commence the production of a product of which one or more of the components shall be mineral salts, minerals or chemicals obtainable from the Dead Sea, not being a product then manufactured by the Concessionaire or its sub-concessionaires, Government shall be entitled by notice in writing to request the Concessionaire to inform Government within six months of the date of receipt of such notice (hereinafter referred to as "the reply period") whether the Concessionaire is prepared to produce such product.

The Concessionaire shall, during the reply period, be entitled to object in writing to the notice of Government on the ground that the product to which the notice relates is not a product as stated in this sub-clause or that the product is one the manufacture of which would have a negative or adverse influence on the interests or business of the Undertaking, or those of the sub-concessionaires of the Concessionaire in connection with the said sub-concession or on the ground that the provisions of this sub-clause have otherwise not been complied with. In the event of any difference of opinion, the matter shall be referred to and determined by arbitration in accordance with the provisions of Clause 26 hereof.

(b) Every notice from Government under this Clause shall contain a detailed description of the product to be produced and the process for the production of such product and shall contain an undertaking from Government to give, or cause to be given, to the Concessionaire upon request, sufficient knowhow, on reasonable terms, to enable the Concessionaire to produce the product in commercial quantities in accordance with the process mentioned in the notice, and also to grant, or cause to be granted, to the Concessionaire, all such licences under patents relating to the product and the process as to protect the Concessionaire against any infringement suits.

The notice shall specify the name and address of the owner of the knowhow or the patent, as the case may be, and shall be accompanied by a copy of the specification and claims of the patent and shall set forth the conditions on which the owner of the said knowhow or the said patent is prepared to supply such knowhow, or to grant a licence under such a patent to the Concessionaire, as the case may be. The Company shall not deliver to others any knowhow or patent which it has received as aforesaid.

(c) If the Concessionaire shall notify Government in writing within the reply period that it is prepared to produce such product in commercial quantities to be agreed to by the parties, the Concessionaire shall commence to carry out the works necessary for such production and shall complete the same within such period as shall be agreed between Government and the Concessionaire. In the event that the parties shall fail to reach agreement as to the quantities of the product, the period for the commencement of the erection of the works, or the period for the completion thereof, the matter shall be referred to and determined by arbitration in accordance with the provisions of Clause 26 hereof.

(d) If the Concessionaire shall notify Government in writing within the reply period that it is not prepared to produce such product, but that it has no objection to Government granting to another person the right to produce such product, or if the Concessionaire shall fail to reply in writing during the reply period, Government shall be entitled to grant to another person the right to produce such product, on terms which shall not be more favourable than those set forth in the notice, and thereafter the Concessionaire shall be bound to supply to such persons, on reasonable terms, such end brine from the Dead Sea as will be reasonably required for such production, subject to there being sufficient end brine available in excess of the requirements of the Concessionaire and its sub-concessionaires.

(e) If Government and the Concessionaire shall fail to reach agreement within three months from the date of a final award in the arbitration rejecting the objections of the Concessionaire as aforesaid in sub-clause (a) as to the quantities to be produced, the time for commencement of the erection of the necessary works for the production of the product and for the completion of the same, the matter shall be referred to and determined by arbitration in accordance with the provisions of Clause 26 hereof.

(f) If the Concessionaire shall fail to commence the erection of the necessary works, or to complete the same within the periods agreed upon between Government and the Concessionaire, or determined upon by the arbitrators, as the case may be, Government shall be entitled to grant to another person the right to produce such product on terms which shall not be more favourable then those set forth in the notice as stated above, and thereafter the Concessionaire shall be bound to supply to such person, on reasonable terms, such end brine from the Dead Sea as shall reasonably be required for such production, subject to there being sufficient end brine available in excess of the requirements of the Concessionaire and its sub-concessionaires.

No contract for restriction of output.

14. The Concessionaire and any sub-concessionaires of the Concessionaire shall not, without the previous consent in writing of Government, make any contract or arrangement with any person for the restriction of the output of the products of the Concessionaire or for raising or keeping up prices in such a way as to restrict output. The provision of this Clause shall be in substitution for the Restrictive Trade Practices Law, 5719-1959, which shall not apply to the Concessionaire and its sub-concessionaires with regard to the subconcession.

Royalties.

15. (a) In consideration of all the rights and privileges granted to the Concessionaire by this Deed of Concession, except the lease referred to in Clause 6 above (in respect of which rent will be paid as stated in the said Clause 6) the Concessionaire shall pay to Government commencing the year beginning 1st April, 1964, and thereafter in each year, the following royalties, namely —

(1) a royalty equal to 5% of the value of potassium chloride, bromine and magnesium chloride produced by the Undertaking and sold in such year and such value shall be ascertained in the manner hereinafter appearing:

The value or every product referred to in this sub-Clause shall be ascertained at the end of each year and shall be the value thereof ex works unpacked. Such value shall be determined by taking the sales price (including any benefits to the extent that the same shall be granted) during such year and deducting from such price the following amounts, that is to say —

(i) The proper costs of packing, sales commission and transport and insurance from the works of the Concessionaire to the place of destination agreed upon with the customer; and

(ii) 10% of the amount which shall remain after deducting from the said sales price all the proper costs referred to in paragraph (i) of this sub-clause.

If the production and sales of potassium chloride in any year shall exceed 1,000,000 tons Government shall be entitled to demand reconsideration of the amount of the royalties to be paid in regard to the quantity in excess of 1,000,000 tons of potassium chloride sold in such year, PROVIDED THAT the royalties on such excess shall

in no event exceed 10% of the sales price calculated as above.

(2) A royalty equal to 5 per cent, of the value of products other than products referred to in sub-clause (1) above, produced by the Undertaking and sold in such year and consisting of, or comprising mineral salts, minerals and chemicals obtained from the Dead Sea, and such value shall be ascertained in the manner hereinafter appearing. The value of every product referred to in this sub-clause shall be ascertained at the end of each year and shall be the value thereof ex works unpacked; such value shall be determined by taking the sales price (including any benefits to the extent that the same shall be granted) during such year and deducting from such price the following amounts, that is to say: —

(i) The proper costs of raw materials (not being mineral salt, minerals and chemicals obtained from the Dead Sea) present in the product sold, plus 15% of such proper costs; and

(ii) The proper costs of packing, sales commission and transport and insurance from the works of the Concessionaire to the place of destination agreed upon with the customer; and

(iii) 10% of the amount which shall remain after deducting from the said sales price all proper costs referred to in paragraph (ii) of this sub-clause.

(b) Government shall be entitled, with the approval of the Finance Committee of the Knesset, to reduce the royalties payable in respect of products referred to in sub-clause (a) (2) of this Clause.

(c) The amount of the royalties for each year shall be ascertained and certified by the auditor. The sum due shall be paid to Government by the Concessionaire within 120 days of

the expiry of each year in respect of which the royalties are payable.

(d) Royalties payable by the Concessionaire to Government under this Deed of Concession shall, for the purpose of the Income Tax Ordinance, be deemed to be an expense wholly and exclusively incurred in the production of the income of the Concessionaire.

(c) For the purposes of this Clause, the expression "year" means a year commencing on the 1st day of April, and expiring on the following 31st day of March.

Accounts and returns.

16. (a) The Concessionaire shall keep at all times at its principal office all usual and proper books of account to be open at all reasonable times for inspection by the representatives of Government upon notice in advance.

(b) The Concessionaire shall send to Government every year a duty audited balance sheet and profit and loss account and a detailed return certified by an auditor, giving all such particulars as shall be required for calculating the royalties payable to Government in such year in accordance with Clause 15 above.

Transport facilities.

17. Government shall provide and maintain for the period of the Concession suitable and sufficient roads or railways and port facilities so as to enable the transportation of the products of the Concessionaire and the shipment of the same by sea from ports in Israel.

Communications.

18. Government shall, subject to the Post Office Ordinance, permit the Concessionaire to set up, maintain and operate, at its own expense, a telecommunication system (which expression shall include a telegraph and telephone system,

whether overhead or underground, teleprinter, telecommunication and wireless installations) providing communication between the various establishments of the Undertaking, but any such communication system shall be used exclusively for the purpose of the Undertaking and shall be subject to the supervision of Government and shall not be so constructed or operated as to interfere with the operations of any competent authority.

Public health.

19. The Concessionaire shall comply with all laws relating to public health and safety and with such provisions of the Mining Ordinance and the Factories Ordinance, 1947[2]), and Regulations made thereunder relating to health and safety of workers.

Payment in lieu of local rates.

20. (a) The Minister of Finance and the Minister of the Interior may by order provide that the Concessionaire shall during the whole or any part of the period of the Concession pay to Government a fixed rate to be agreed upon between the Minister of Finance, the Minister of the Interior and the Concessionaire; such rate shall be in lieu of local rates.

(b) Upon such order coming into operation, no local authority shall be entitled to impose upon or collect from the Concessionaire any local rates, and the Minister of the Interior will distribute among the local authorities concerned in such manner and in such proportions as he may from time to time deem fit all the moneys which shall have been received by Government under this Clause in lieu of all the rates which, but for the provisions of this Clause and such order as aforesaid, would have been payable by the Concessionaire.

---

[2] This apparently refers to the Factories Ordinance, 1946, now known as the Work Safety Ordinance, 1946-Tr.

(c) Nothing in this clause or in any such order as aforesaid, shall derogate from any relief or exemption from local rates to which the Concessionaire may at any time be or become entitled to by virtue of the provisions of the Law for the Encouragement of Capital Investments 5719-1959, or any other law, and in making any such order as aforesaid the Minister of Finance and the Minister of the Interior shall give effect to such relief or exemptions as aforesaid.

Prohibition of assignment.

21. Without the prior written consent of Government, and with the approval of the Finance Committee of the Knesset, the Concessionaire shall not be entitled to assign, mortgage or dispose of the Concessionaire or any part thereof.

Force majeure.

22. Failure or omission or breach, whether by the Concessionaire or Government, in the observance or performance of any of the stipulations, agreements or conditions in this Concession contained and on the part of either party to be observed or performed, shall not give rise to any claim or demand by one party against the other party, nor in any manner operate to the prejudice of the other party, or be deemed a breach of this Concession, if it be reasonably shown that the non-performance or non-observance has arisen from any one or more of the following causes: Act of God, acts of foreign rulers or peoples, acts of infiltration, war, warlike operations, blockade, embargo, insurrection, rebellion, riots, strikes and lockouts or labour disputes, fire, storm, tempest, explosion, earthquake, floods or other causes beyond the control of the parties.

Remedies.

23. (a) If any of the parties hereto shall fail to observe or perform any of the stipulations, agreements or conditions in this Concession contained and on the part of such party to be observed and performed, the defaulting party (hereinafter

referred to as "the defaulter") shall pay the other party (hereinafter referred to as "the aggrieved party") damages in an amount sufficient to indemnify the aggrieved party against the loss sustained by such failure.

(b) If the aggrieved party contends that the failure to observe or perform on the part of the defaulter is of so grave a nature as to be of the essence of this Concession, the aggrieved party may by notice in writing to the defaulter require the latter to remedy the failure within such time as may be reasonable in the circumstances.

If the defaulter fails to comply with such requirement, the aggrieved party shall be entitled to refer to arbitration a claim to treat the Concession as terminated. If it is found upon arbitration that the breach was of the nature contended by the aggrieved party as aforesaid, the arbitration may decide to terminate this Concession as from such date as it may deem just in the circumstances and, subject to the provisions of Clause 24 hereof, the severance of the relations between the parties on such terms as it may deem just and matters incidental thereto. The arbitration may also in addition to or in place of termination of the Concession award damages or compensation or such other remedy or remedies as it may deem just under the circumstances, and in the event of termination of the Concession Government shall be entitled to set off the amount of any such damages or compensation awarded to it against any payment due from Government to the Concessionaire under Clause 24 hereof.

If the default consists in failure to grant any lease of any land under and in pursuance of Clause 6 hereof, the arbitration shall be entitled, in addition to any other remedy, to order Government to lease or cause to be leased to the Concessionaire such lands on terms to be fixed by it in conformity with Clause 6 hereof.

(c) If any order shall be made or an effective resolution passed for the winding up of the Concessionaire (otherwise

than for the purposes of amalgamation or reconstruction with the consent of Government and approval of the Finance Committee of the Knesset) such order or resolution shall be treated by the arbitration as a breach by the Concessionaire of its obligations under this Deed of Concession entitling Government to treat the Concession as terminated.

Treatment of assets on expiration of Concession.

24. (a) Upon the expiration or sooner determination of this Concession (hereinafter referred to as "termination date") all fixed tangible assets belonging to the Concessionaire shall become vested in Government, and Government shall pay to the Concessionaire in respect of such fixed tangible assets the depreciated replacement value thereof as at the termination date and all other property of any nature whatsoever belonging to the Concessionaire at the termination date shall remain the property of the Concessionaire.

The expression "depreciated replacement value" in relation to fixed tangible assets means the cost of acquiring similar assets when new at the market price prevailing at the termination date, less depreciation in respect of the period of user of each asset, such depreciation to be based on the technical life of such assets, taking into account the condition of maintenance of the same by the Concessionaire and the conditions prevailing in the Dead Sea area.

If at the termination date the fixed tangible assets or any part thereof shall be mortgaged or charged, such mortgage or charge shall continue to attach to such assets, but the depreciated replacement value thereof shall not be reduced by reason of such mortgage or charge and the following provisions shall apply: —

(I) Government shall be entitled to withhold from such depreciated replacement value such sum as will be sufficient to repay the principal and interest secured by such mortgage or charge as and when the same shall become

due, or a sum equal to the depreciated replacement value of the asset, whichever is the lower sum;

(II) In the event that Government shall withhold such sum as aforesaid, it shall apply the same in repaying the principal and interest secured by the mortgage or charge, or shall indemnify the Concessionaire up to the amount of the sum withheld in respect of such mortgage or charge, against all claims and demands by the mortgagee or chargee in respect of such principal or interest as aforesaid, and the balance of sum, if any, shall be repaid to the Concessionaire.

(b) The Concessionaire shall not, without the prior written consent of Government, during the ten years preceding the date of the expiration of this Concession, make any new capital investment in the Undertaking, unless such investment can be amortised in entirety during the said period of ten years in accordance with the Income Tax Ordinance, PROVIDED THAT the consent of Government to any basic investment which may be essential for the proper operation of the Undertaking shall not be unreasonably withheld or delayed.

Pre-emption for new Concession.

25. If, after the expiration of the Concession, Government shall desire to offer a new concession for the extraction of mineral salts, minerals and chemicals from the Dead Sea to any person other than the Concessionaire, Government shall first offer to the Concessionaire a new concession on terms not less favorable than those proposed to be offered to such other person.

Arbitration.

26. If at any time within the period of the Concession or thereafter, any doubt, difference, or dispute shall arise between the parties concerning the interpretation or execution of this Concession or anything connected therewith or concerning the rights and liabilities of the parties thereto, the same shall,

failing any agreement to settle the doubt, difference or dispute by other means and without taking into account whether or not there are any express provisions for the reference of the matter to arbitration under any other Clause of this Deed of Concession, be referred to the arbitration of three persons, one to be appointed by each party to the reference and the third to be appointed by writing under the hands of the two so appointed before the reference is proceeded with. Failing agreement by such two arbitrators as to the third arbitrator, such third arbitrator shall be appointed by the President for the time being of the District Court of Jerusalem.

In the event that the arbitration shall involve a matter of valuation or any other technical matter, the third arbitrator appointed as aforesaid shall be a technical expert competent in the particular matter.

The award of the three arbitrators shall be final and binding upon the parties. In the event that the arbitrators shall not be unanimous, the majority award shall be final and binding. The place of the arbitration shall be such as will be agreed between the parties and failing agreement shall be Jerusalem. Save where otherwise provided in this Deed of Concession, the provisions of the Arbitration Ordinance shall apply to any arbitration under this Clause.

Nothing in this Clause shall relieve Government from the necessity of obtaining the approval of the Finance Committee of the Knesset in such matters in which such approval is required under the terms of this Deed of Concession.

Notices.

27. Whenever any notices, consents, applications, requests or communications (hereinafter called "notices") are to be given hereunder, the notices shall be in writing and shall be deemed to be duly given if mailed by prepaid registered post to the parties at the following addresses:

Government at:	Ministry of Finance and Ministry of Development, Jerusalem.
The Concessionaire at:	Potash House, Beersheba.

or to such other address within the State of Israel as any of the parties may designate by a similar notice to the other.

Any notice to be sent shall be deemed to have been served at the expiration of seventy-two hours from the posting of the letter containing such notice duly addressed.

Waiver.

28. (a) The receipt by Government of any payment from the Concessionaire under this Concession, whether on account of royalties or otherwise, shall not be deemed to imply a waiver by Government of any rights in respect to any antecedent breach of any of the provisions of this Concession.

(b) No waiver by any party of any breach of any term hereof shall be considered as a waiver of any subsequent breach of that term or any other term, whether of the same or of a different nature.

Marginal notes.

29. The marginal notes herein provided shall not be relied upon in the construction of the provisions of this Concession.

Wavier of notarial notice.

30. The parties hereto hereby waive and agree to dispense with the necessity of any notarial or other official notice or protest in respect of any breach or default of any of the terms hereof.

Action by Government.

31. Anything under this Concession permitted to be done or exercised and any consent to be given by Government under this Concession shall be properly done, exercised or given by

the Minister or by any person appointed under his hand in that behalf.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals on the day and year first hereinbefore mentioned.

Sgd. Israel Hillman	Sgd. M. Bentov, *Minister of Development*
Sgd. Emanuel Saham	Sgd. L. Eshrol, *Minister of Finance*
for and on behalf of MIRALLI YAM HAMELAH B.M.	for and on behalf of the State of Israel
DAVID BEN-GURION *Prime Minister*	LEVI ESHKOL *Minister of Finance*
MORDEKHAI BENTOV *Minister of Development*	YITZCHAK BEN-ZVI *President of the State*

(No. 40)

DEAD SEA CONCESSION (AMENDMENT) LAW, 5728-1968

Amendment of Concession.

1. The Deed of Amendment of Concession set out in the Schedule to this Law, made between the State and the Concessionaire named therein, shall be deemed to be valid for all its purposes notwithstanding anything provided in any law.

Commencement.

2. This Law shall have effect as from the 27th Sivan, 5721 (11th June, 1961).

SCHEDULE

This Deed of Amendment of Concession, made on the 21st Tammuz, 5728 (17th July, 1968)

between

THE STATE OF ISRAEL, represented by the Government of Israel acting through the Minister of Finance and the Minister of Development, of the one part

and

MIFALE YAM HAMELAH B.M. (Dead Sea Works Limited), a company incorporated under the laws of Israel, whose registered office is situated at Potash House, Beersheba, of the other part

hereby attests, and it is hereby agreed and declared as follows:

1. This Deed is an Amendment to the Deed of Concession made between the above-mentioned parties on the 15th Sivan, 5721 (30th May, 1961) (hereinafter referred to as "the Deed of Concession").

2. In Clause 15(a) of the Deed of Concession, the words "commencing in the year beginning 1st April, 1964" shall be replaced by the words "commencing in the year beginning the 1st April, 1970".

3. In Clause 18 of the Deed of Concession, the words "subject to the Post Office Ordinance" shall be replaced by the words "subject to the Wireless Telegraphy Ordinance".

In witness whereof the parties hereto have hereunto set their hand and seals on the day and year first hereinbefore mentioned.

PINCHAS SAPIR
Minister of Finance

MOSHE KOL
Minister of Development
for and on behalf of the State of Israel

EMANUEL SAHAR SHAUL TECHETCHIK
for and on behalf of Mifalei Yam Hamelah B.M.

LEVI ESHKOL
Prime Minister

PINCHAS SAPIN
Minister of Finance

MOSHE KOL
Minister of Development

SHNLUA ZALMAN SHAZAR
President of the State

Dead Sea Concession Law, 5721 – 1961

Sub-Concession of the DEAD SEA BROMINE COMPANY LTD.

Pursuant to clause 2 of the Dead Sea Concession Law, 5721-1961, a Sub-Concession granted under the provisions of clause 5 of the Deed of Concession in the Schedule to the Law by the Concessionaire specified in the said Deed of Concession to the Dead Sea Bromine Company Ltd., is hereby published in the following version:

This Deed of Sub-Concession is made this 14th day of Cheshvan, 5723 (11th of November, 1962).

between

Mifalei Yam Hamelah B.M. (Dead Sea Works Ltd.) a company incorporated under the laws of Israel, whose registered office is situate at Potash House, Beersheba (hereinafter referred to as "the Main Concessionaire") of the one part;

and

Dead Sea Bromine Company Ltd. a company incorporated under the laws of Israel, whose registered office is situate at the said Potash House, Beersheba (hereinafter referred to as "the Sub-Concessionaire") of the other part;

Whereas:-

(A) Under a Deed of Concession (hereinafter referred to as "the Main Concession") made on 30th of May 1961 between the Government of Israel (hereinafter referred to as "Government") of the one part and the Main Concessionaire of the other part, Government granted to the Main Concessionaire the exclusive right to obtain by evaporation (solar or artificial), cooling, mining, quarrying or otherwise howsoever, the mineral salts, minerals and chemicals, whether in solution or solid form, in and beneath the Dead Sea, and to

render marketable, sell and dispose of the same, and all other rights and privileges, subject to the obligations, terms and conditions set out in the Main Concession;

(B) Clause 5 of the Main Concession empowered the Main Concessionaire, with the consent of Government and the approval of the Finance Committee of the Knesset, to grant Sub-Concessions under the Main Concession;

(C) The Main Concessionaire has full control in the Sub-Concessionaire;

(D) The Main Concessionaire has, subject to the limitations, terms and conditions hereinafter set forth, agreed to grant to the Sub-Concessionaire a sub-concession to obtain bromine and bromine compounds from mineral salts, minerals and chemicals, whether in solution or solid form, which are in and beneath the Dead Sea, and to render marketable, sell and dispose of the same, and such other rights as are hereinafter set out, and the Sub-Concessionaire is prepared to accept such a Sub-Concession subject to the said limitations, terms and conditions;

(E) In a letter dated the 14th of Cheshvan, 5723 (11th of November, 1962) and signed by the Minister of Finance and the Minister of Development, Government agreed to grant the Sub-Concession to the Sub-Concessionaire as aforesaid.

It Is Hereby Agreed And Declared As Follows : -

1. (a) In this Sub-Concession, unless the context otherwise requires, the following words and expressions shall have the meanings set out opposite thereto, namely: bromine compounds - compounds in which bromine is an element or the derivatives of such compounds except for compounds in which bromine is a trace element only or compounds which though containing bromine are not generally described as bromine compounds in commerce or industry.

Concentrated solution - a solution originating in the Dead Sea and which underwent evaporation or any other treatment by the Main Concessionaire and is found in any of the production stages of potash or other products of mineral salts, minerals and chemicals which are in the Dead Sea, executed by the Main Concessionaire.

Solution from the Dead Sea - any solution from the Dead Sea, which did not undergo any evaporation or other treatment by the Main Concessionaire, The Undertaking, with respect to the Sub-Concessionaire the business of obtaining bromine and bromine compounds, and the rendering marketable, selling and disposing of the same, and such other business, properties and things of the Sub-Concessionaire necessary for or ancillary to the said business, all in accordance with the Sub-Concession.

(b) Words and expressions whose meaning are defined in the Main Concession shall be so defined in the Sub-Concession, unless the meaning of the context otherwise requires.

2. (a) the Main Concessionaire hereby grants to the Sub-Concessionaire -

(1) the exclusive right to obtain bromine and bromine compounds from mineral salts, minerals and chemicals, whether in solution or solid form, which are in and beneath the Dead Sea and to render marketable, sell and dispose of the same;

(2) the right, subject to the provisions of clause 2(d) of the Main Concession, to do all or any of the following acts in the leased lands and the reserved lands:

a) to obtain by quarrying, mining or any other means of extraction howsoever, such mineral salts, minerals and chemicals as the Sub-Concessionaire may from time to time require for use in any process of production of bromine

or bromine compounds employing mineral salts, minerals and chemicals obtained or obtainable from the Dead Sea.

b) to quarry for materials necessary for constructing, enlarging and maintaining the Undertaking.

(b) The Sub-Concessionaire shall, in order to exercise the rights granted thereto under sub-clause (a) of this clause, be entitled to enter the Dead Sea areas, the leased lands and the reserved lands at such points and upon such terms as shall from time to time be prescribed in writing by the Main Concessionaire (and such points, employed for the purpose of concentrated solution shall hereinafter be referred to as "Delivery Points"), to obtain solution from the Dead Sea, concentrated solution and other salt minerals, minerals and chemicals from which bromine and bromine compounds shall be extracted and to extract all the above mentioned in such quantities, with such means, in such manner and for such purpose as aforesaid, to lay pipes and construct pumping stations and such other works in or above the aforementioned areas as shall from time to time be prescribed in writing by the Main Concessionaire.

3. The Sub-Concession is granted for a period commencing on the date of the Sub-Concession or on the date on which the Sub-Concession shall be approved by the Finance Committee of the Knesset, whichever later date, and terminating one day before the expiration or sooner determination of the Main Concession, unless the Sub-Concession shall be terminated sooner, as hereinafter provided.

4. (a) The Main Concessionaire hereby sub-leases to the Sub-Concessionaire for the duration of the Sub-Concession, the lands shown in the Map marked 'A' and attached to the Sub-Concession, situated within the boundaries of the lands leased by the Main Concessionaire and delineated on the map by slanted dense dotted-lines, for such rent and upon such terms as hereinafter provided.

(b) The rental to be paid by the Sub-Concessionaire to the Main Concessionaire in respect of the sub-lease hereby granted shall be the amount of IL. 1.- (One Israel Pound) for a period commencing on the date on which the Sub-Concession shall come into force, and terminating 10 (ten) years after the commencement of the Main Concession, and thereafter shall be an amount equal to the rental payable by the Main Concessionaire to Government under the Main Concession in respect of the lands sub-leased hereunder, and payable yearly in advance one week before the anniversary date of the Main-Concession.

(c) If the Sub-Concessionaire shall require for its Undertaking or the expansion thereof additional lands being part of the leased lands or the reserved lands, the Main Concessionaire shall at the Sub-Concessionaires request sub-lease same thereto for the duration of the remaining period of the sub-lease. The Main Concessionaire, however, shall not be obligated to sub-lease as aforesaid any additional lands if same are required for the undertaking of the Main Concessionaire or of any other of its Sub-Concessionaires and any additional lands of the reserved lands, if it is unable to obtain a lease of those additional lands under clause 6(c) of the Main Concession.

(d) During the period commencing on the date on which the Sub-Concession shall come into force and terminating 10 (ten) years after the commencement of the Main Concession, the rental to be paid in respect of the additional lands shall be nominal and thereafter shall be an amount equal to the rental payable by the Main Concessionaire to Government under the Main Concession in respect of the said additional lands. The other Terms of the Sub-Concession shall, mutatis mutandis, be like the term applicable to the lands hereby sub-leased.

(e) If at the expiration of the first ten years from the commencement of the Main Concession it shall transpire that the Sub-Concessionaire does not reasonably require all the

lands comprised in any lease granted under sub-clause (c) hereof for the purposes of the Undertaking, having regard to the production capacity of the Undertaking at such time, the Main Concessionaire shall be entitled at any time to require the Sub-Concessionaire, by giving not less than twelve months' prior notice in writing to that effect, to surrender such unrequired part; No such surrender, however, shall prevent the Sub-Concessionaire from subsequently requiring the Main Concessionaire to lease such lands or cause such lands to be leased thereto in accordance with sub-clause (c) of this clause.

(f) The sub-lease hereby granted is subject to all the mortgages and charges created and to be created hereafter in favour of any trustee under any deed of trust signed pursuant to an agreement made on the 11th of July, 1961 between the International Bank for Rehabilitation and Development and the Main Concessionaire.

(g) The Sub-Concessionaire shall use the lands sub-leased thereto exclusively for the purposes of its Undertaking.

(h) There are excepted out of the sub-lease under this clause all public roads passing through the lands leased under the provisions of the Sub-Concession.

(i) Any sub-lease granted under this clause shall be valid notwithstanding the failure to effect registration thereof at the competent Land Registry, provided that when Government shall procure the registration of the lease of the lands specified in clause 7 of the Main Concession, the Sub-Concessionaire shall, within 30 (thirty) days of the receipt thereby from the Main Concessionaire of a notice to that effect, appear at the competent Land Registry and execute all such documents as may be necessary to effect the sub-lease granted pursuant to this clause. The registration aforesaid and the issue of certificates of registration to the Sub-Concessionaire in respect of the said lands shall be effected free of registration fees and any other imposts whatsoever.

(j) The Sub-Concessionaire shall not be entitled to create any mortgage or fixed charge on the leasehold interest without the prior consent of the Minister and the Main Concessionaire. Any mortgage or charge created with such consent as aforesaid in respect of any sub-leased lands not registered in the Land Registry shall, notwithstanding such non-registration, be valid, provided that the mortgage is duly registered in accordance with section 127 of the Companies Ordinance and provided further that the holder of such mortgage or charge shall, within three months from receiving notice from the Main Concessionaire of the registration of the said land in the said Land Registry, apply to the competent Land Registry for the registration of such mortgage or charge.

5. Notwithstanding any of the provisions in the Sub-Concession, the Whole area of the Dead Sea, and of the leased lands or the reserved lands on which part of the Undertaking of the Sub-Concessionaire is managed or on which installations or any other equipment of the Sub-Concessionaire are fixed, whether or not the area is sub-leased to the Sub-Concessionaire, may be used by the Main Concessionaire at all times for the following purposes:

(a) for entry for the purpose of making any inspection and surveys as it may deem fit,

(b) for passing through repeatedly with or without workers, contractors and vehicles in order to approach any part of the Undertaking of the Main Concessionaire and exit therefrom, along such pathways as the Main Concessionaire shall from time to time at its discretion prescribe;

(c) for laying pipes and cables, constructing pumping stations and other works, roads, railways and other means of transport, from one end to the other end, over or beneath the said areas.

6. In consideration of the expenses incurred by the Main-Concessionaire by reason of pumping concentrated solution up

to the delivery point and by reason of the repairing and maintaining of pipes, pumping units, installations, dams and evaporation pans of the Main Concessionaire, the Sub-Concessionaire shall pay the Main Concessionaire an amount of 20 (twenty) Agorot for each cubic meter of concentrated solution obtained by the Sub-Concessionaire at the delivery point in consequence of the Sub-Concession.

Payments under this clause shall be yearly and made on the 1st of January of each year, and the first payment shall be made on 1st of January, 1963.

If at any time, any one of the parties to the Sub-Concession shall maintain that the amount of the said payment should be modified, it shall be entitled to request the other party to agree to the modification and such other amount shall be paid from such date as agreed upon by the parties and, failing agreement, as determined by the arbitration in accordance with the provisions set out hereinafter in clause 23. So long as no award is made by the arbitration, the amount payable shall continue to be that which was in effect prior to the requested modification.

7. If the Main Concessionaire shall execute in or about the Dead Sea, the leased lands or reserved lands, public works, including flood-protection works, railways, roads, water - electricity - gaz - or fuel works, and such public works shall be likely to benefit the Undertaking of the Sub-Concessionaire, the Sub-Concessionaire shall participate in the execution and maintenance expenses in such manner as shall deem fit in the circumstances and having regard to the degree of benefit enjoyed by the Sub-Concessionaire from such works, on the one hand, and the degree of benefit enjoyed by the Undertaking of the Main Concessionaire and others, on the other hand, provided that nothing contained in this clause shall apply to the costs of the construction or maintenance of dams, evaporation pans, pumping units, installations, pipelines and other works connected therewith.

Payments under this clause shall be made on such dates and in such manner as shall be prescribed by agreement of the parties and, failing agreement, by arbitration in accordance with clause 23 below.

8. The Sub-Concessionaire undertakes with all due diligence to operate its Undertaking for the production of bromine and bromine-compounds.

9. (a) If at any time Government shall, pursuant to clause 13 of the Main Concession, give notice to the Main Concessionaire requesting it to commerce production of a product as provided in that clause and such product shall be bromine or bromine compounds, the Main Concessionaire shall forthwith send a copy of such notice to the Sub-Concessionaire with a written request to inform the Main Concessionaire within three months from the date of receipt of such notice whether the Sub-Concessionaire is prepared to produce such product.

(b) If the Sub-Concessionaire shall wish the Main Concessionaire to exercise the powers vested in it by clause 13 of the Main Concession to object to the notice of Government, it shall within the said period of three months give notice thereof to the Main Concessionaire and present thereto all the reasons and evidence required and desirable for the preparation of the objection.

(c) Notice of the Sub-Concessionaire to the Main Concessionaire under sub-clause (a) of this clause that it is prepared to produce such product, or notice under sub-clause (b) of this clause of its request that the Main Concessionaire shall object to Government notice, shall not be binding upon the Main Concessionaire. The Main Concessionaire, however, shall consider such notice before it gives notice to Government that the Sub-Concessionaire is prepared to produce that product or that the Main Concessionaire objects to the Government notice in accordance with the said clause 13. Moreover, the Main Concessionaire, before giving notice

to Government as aforesaid, shall be entitled to take into account each one of the matters specified in the said clause 13 of the Main Concession, whether they are relevant to or have been raised by the Sub-Concessionaire, or not.

(d) If the Sub-Concessionaire shall give notice that it is prepared to produce the product specified in the Government notice and the Main Concessionaire shall confirm such notice under sub-clause (c) of this clause, it shall forthwith give written notice thereof to the Sub-Concessionaire, and the Sub-Concessionaire shall do everything required as speedily as possible to secure the discharge of the obligations of the Main Concessionaire under clause 13 of the Main Concession, with respect to the said product.

(e) If the Sub-Concessionaire shall within the said period of three months notify the Main Concessionaire that it is not willing to produce such product, or if it shall give no notice of its decision, the Main Concessionaire shall at its discretion, and without prejudicing any other remedy it may have under the Sub-Concession or any law, be entitled to object to the Government notice or accept such notice and produce the said product either by itself or by another Sub-Concessionaire or licencee, or notify Government that it has no objection to Government granting to another person the right to produce such product.

(f) Save as in this clause otherwise provided, the Sub-Concessionaire shall comply with, discharge and observe all the obligations of the Main Concessionaire to Government under the said clause 13 with respect to the production of bromine and bromine compounds, including the obligations of the Main Concessionaire emanating from any arbitration award under the Main-Concession with respect to bromine and bromine compounds and the production thereof.

(g) The Sub-Concessionaire shall cooperate with the Main Concessionaire in the supply of technical assistance, testimonies and reasons before any arbitration between

Government and the Main Concessionaire under the said clause 13 of the Main Concession, with respect to the proposed production of bromine or bromine compounds or any matter deriving therefrom.

10. The Sub-Concessionaire shall be entitled, with the approval of Government and Main Concessionaire, to dispose of any waste products formed in the course of operating the Undertaking, to a suitable place in the reserved lands.

11. In the absence of any other express provision in the Sub-Concession (excepting the obligation of the Main Concessionaire to pay royalties to Government, and to pay rent under the Main-Concession), the Sub-Concessionaire hereby agrees to assume all the obligations of the Main Concessionaire with respect to obtaining bromine and bromine compounds and rendering marketable, selling and disposing of the same, and comply with and observe all the terms of the Main Concession, and to indemnify the Main Concessionaire in respect of any claims, damages and expenses related thereto in any way howsoever.

12. (1) There are excepted and reserved to Government, out of the grants hereinbefore in clause 2 set out -

(a) gold, silver or other precious metals and their ores, precious stones, copper and iron ores, antiquities and petroleum as defined in the Petroleum Law, 5712-1952 (hereinafter collectively referred to as "the Excepted Substances"), in or beneath the Dead Sea, the leased lands or the reserved lands;

(b) the right to enter upon any facilities and property of the Sub-Concessionaire in or beneath the Dead Sea, the leased lands or the reserved lands for the purpose of making any survey or inspection in connection with the matters stated in sub-clause 1(a) of this clause.

(2) The Sub-Concessionaire shall forthwith upon the discovery of any of the excepted substances, give Government

and Main Concessionaire notice of such discovery, and shall permit Government or any person authorized by it to enter upon any place as mentioned in sub-clause (1)(b) for the purpose of exploring for or obtaining the excepted substances, and Main Concessionaire shall pay the Sub-Concessionaire compensation for any damage thereby occasioned to the Sub-Concessionaire, within the limits of the compensation paid to Main Concessionaire by the Government under clause 3 (2) of the Main Concession.

13. The Sub-Concessionaire shall not, without the previous consent in writing of Government and Main Concessionaire, make any contract or arrangement with any person for the restriction of the output of the products of the Sub-Concessionaire or for raising or keeping up prices in such a way as to restrict output. The provisions of this clause shall be in substitution for the Restrictive Trade Practices Law, 5719-1959, which shall not apply to the Sub-Concessionaire with regard to the Sub-Concession.

14. The Sub-Concessionaire shall comply with all laws relating to public health and safety and with such provisions of the Mining Ordinance and the Factories Ordinance, 1947, and Regulations made thereunder as are related to health and safety of workers.

15. (a) The Sub-Concessionaire may request the Main Concessionaire to make an application to the Minister of Finance and the Minister of the Interior to make an order, providing that the Sub-Concessionaire shall during the whole or any part of the period of the Sub-Concession pay to Government a fixed rate to be agreed upon between the Minister of Finance, the Minister of the Interior and the Sub-Concessionaire; such rate shall be in lieu of local rates.

(b) Upon such order coming into operation, no local authority shall be entitled to impose upon or collect from the Sub-Concessionaire any local rates, and the Minister of the Interior will distribute among the local authorities concerned

in such manner and in such proportions as he may from time to time deem fit all the moneys which shall have been received by Government under this Clause in lieu of all the rates which, but for the provisions of this Clause and such order as aforesaid, would have been payable by the Sub-Concessionaire.

(c) Nothing in this clause or in any such order as aforesaid, shall derogate from any relief or exemption from local rates to which the Sub-Concessionaire may at any time be or become entitled to by virtue of the provisions of the Law for the Encouragement of Capital Investments 5719-1959, or any other law, and in making any such order as aforesaid the Minister of Finance and the Minister of the Interior shall give effect to such relief or exemptions as aforesaid.

16. Failure or omission or breach, whether by the Main Concessionaire, or the Sub-Concessionaire, in the observance or performance of any of the stipulations, agreements or conditions in this Sub-Concession contained and on the part of either party to be observed or performed, shall not give rise to any claim or demand by one party against the other party, nor in any manner operate to the prejudice of the other party, or be deemed a breach of this Sub-Concession, if it be reasonably shown that the non-performance or non-observance has arisen from any one or more of the following causes: Act of God, acts of foreign rulers or people, acts of infiltration, war, warlike operations, blockade, embargo, insurrection; rebellion, riots, strikes and lockouts or labour disputes, fire, storm, tempest, explosion, earthquake, floods or other causes beyond the control of the parties.

17. (a) In consideration of all the rights and privileges granted to the Sub-Concessionaire by this Deed of Sub-Concession, except the Sub-leases referred to in Clause 4 above and except the matters referred to in Clauses 6 and 7 above (in respect of which rent will be paid as stated in the said Clauses) the Sub-Concessionaire shall pay to Main Concessionaire commencing

the year beginning 1st April, 1964, and thereafter in each year, a royalty equal to 5% of the value of bromine produced by the Sub-Concessionaire and sold in such year and such value shall be ascertained at the end of each year and shall be the value thereof ex works of Sub-Concessionaire unpacked. Such value shall be determined by taking the sales price (including any benefits to the extent that the same shall be granted) during such year and deducting from such price the following amounts, that is to say -

(I) The proper costs of packing, sales commission and transport and insurance from the works of the Sub-Concessionaire to the place of destination agreed upon with the customer; and

(II) 10% of the amount which shall remain after deducting from the said sales price all the proper costs referred to in paragraph (I) of this sub-clause.

And a royalty equal to 5 per cent, of the value of bromine compounds produced by the Sub-Concessionaire and sold in such year and such value shall be ascertained at the end of each year and shall be the value thereof ex works of Sub-Concessionaire unpacked; such value shall be determined by taking the sales price (including any benefits to the extent that the same shall be granted) during such year and deducting from such price the following amounts, that is to say: -

(I) The proper costs of raw materials (not being mineral salt, minerals and chemicals obtained from the Dead Sea) present in the product sold, plus 15% of such proper costs; and

(II) The proper costs of packing, sales commission and transport and insurance from the works of the Sub-Concessionaire to the place of destination agreed upon with the customer; and

(III) 10% of the amount which shall remain after deducting from the said sales price all proper costs referred to in paragraph (II) of this sub-clause.

(b) If Government shall reduce the royalties payable in respect of bromine compounds under clause 15 of the Main Concession, the royalties payable in respect of the said bromine compounds by the Sub-Concessionaire to the Main Concessionaire shall be reduced and equalized with the reduced royalties as aforesaid.

(c) The amount of the royalties for each year shall be ascertained and certified by an auditor. The sum due shall be paid to the Main Concessionaire by the Sub-Concessionaire within 90 (ninety) days of the expiry of each year in respect of which the royalties are payable.

(d) Royalties payable by the Sub-Concessionaire to the Main Concessionaire under this Deed of Sub-Concession shall, for the purpose of the Income Tax Ordinance, be deemed to be an expense wholly and exclusively incurred in the production of the income of the Sub-Concessionaire.

(e) For the purposes of this Clause, the expression "year" means a year commencing on the 1st day of April, and expiring on the following 31st day of March.

18. (a) The Sub-Concessionaire shall keep at all times at its principal office all usual and proper books of account to be open at all reasonable times for inspection by the representatives of Government and the Main Concessionaire upon notice in advance.

(b) The Sub-Concessionaire shall send to Government and the Main Concessionaire every year a duly audited balance sheet and profit and loss account and a detailed return certified by an auditor, giving all such particulars as shall be required for calculating the royalties payable to the Main Concessionaire in such year in accordance with Clause 17 above.

19. The validity of this Sub-Concession shall expire if the Sub-Concessionaire, without the previous consent of the Main Concessionaire, Government and the approval of the Finance

Committee of the Knesset, shall assign, mortgage, charge or otherwise dispose of the Sub-Concession or any part thereof or grant Sub-Concessions or licences under this Sub-Concession.

20. (a) Notwithstanding all the provisions set out in the Sub-Concession, if the Sub-Concessionaire shall commit a breach of or fail to discharge its obligations to the Main Concessionaire under the Sub-Concession, and shall not remedy such breach or failure within a reasonable time after notice in writing has been given thereto by the Main Concessionaire specifying such breach or failure and requesting the Sub-Concessionaire to remedy same, then, the Main Concessionaire shall, without prejudicing any other right it may have under the Sub-Concession or any law, be entitled at any time by notice in writing to terminate the Sub-Concession and such other rights and privileges given thereunder to the Sub-Concessionaire, and regain possession of all the lands sub-leased thereto under or pursuant to this Sub-Concession.

(b) Notwithstanding any provisions in the Sub-Concession, if an order shall be made or a resolution passed for the winding-up of the Sub-Concessionaire, the validity of the Sub-Concession shall expire, unless Government with approval of the Finance Committee of the Knesset decide otherwise.

21. (a) Upon the expiration of the period of the Sub-Concession otherwise than by the sooner determination of the Sub-Concession under clauses 19, 20 and 26 of the Sub-Concession (hereinafter referred to as "termination date") all fixed tangible assets belonging to the Sub-Concessionaire shall become vested in the Main Concessionaire and the Main Concessionaire shall pay to the Sub-Concessionaire in respect of such fixed tangible assets such amount as shall be received by the Main Concessionaire from Government under clause 24 of the Main Concession as the depreciated replacement value thereof as at the termination date and all other property of any

nature whatsoever belonging to the Sub-Concessionaire at the termination date shall remain the property of the Sub-Concessionaire.

(b) If at the termination date the fixed tangible assets of the Sub-Concessionaire or any part thereof shall be mortgaged or charged, such mortgage or charge shall continue to attach to such assets, but the depreciated replacement value thereof shall not be reduced by reason of such mortgage or charge and the following provision shall apply: -

(I) The Main Concessionaire shall be entitled to withhold from such depreciated replacement value such sum as will be sufficient to repay the principal and interest secured by such mortgage or charge as and when the same shall become due, or a sum equal to the depreciated replacement value of the asset, whichever is the lower sum;

(II) In the event that the Main Concessionaire shall withhold such sum as aforesaid, it shall either itself or agree that Government shall apply the same in repaying the principal and interest secured by the mortgage or charge or to the extent that Government shall indemnify the Main Concessionaire under clause 24(a)(II) of the Main Concession, the Main Concessionaire shall indemnify the Sub-Concessionaire within the limits of the sum given by Government, against all claims and demands by the mortgagee or chargee in respect of such principal or interest as aforesaid; and the balance of the amount of indemnity paid to the Main Concessionaire by Government in respect of the fixed tangible assets of the Sub-Concessionaire shall be repaid to the Sub-Concessionaire.

(c) The Sub-Concessionaire shall not, without the prior written consent of Government and the Main Concessionaire during the ten years preceding the date of the expiration of the Sub-Concession, make any new capital investment in the Undertaking, unless such investment can be amortized in entirety during the said period of ten years in accordance with the Income Tax Ordinance, PROVIDED THAT the consent of

Government and the Main Concessionaire, to any basic investment which may be essential for the proper operation of the Undertaking of the Sub-Concessionaire shall not be unreasonably withheld or delayed.

The withholding or delaying of the said consent due to Government's refusal to consent or Government not granting its consent to the investment at the instructions of the Main Concessionaire, shall not be regarded as a breach of this clause and shall not constitute any cause of action by the Sub-Concessionaire against the Main Concessionaire.

22. (a) Upon the sooner determination of the Sub-Concession by the Main Concessionaire pursuant to clause 20(a) above and upon the expiration thereof under clause 19, 20(b) or 26 of the Sub-Concession (hereinafter referred to as 'the Expiration Date'), the Main Concessionaire shall regain possession of all the lands leased to the Sub-Concessionaire under or pursuant to the Sub-Concession, and all fixed tangible assets belonging to the Sub-Concessionaire shall become vested in the Main Concessionaire, and the Main Concessionaire shall pay to the Sub-Concessionaire in respect of such fixed tangible assets, upon such dates, in such manner and subject to such reservations as are hereinafter provided, the depreciated replacement value thereof, and all other property of any nature whatsoever belonging to the Sub-Concessionaire at the expiration date shall remain the property of the Sub-Concessionaire.

(b) The amount of tine depreciated replacement value payable by the Main Concessionaire to the Sub-Concessionaire under this clause shall be paid in 10 (ten) yearly equal installments, commencing six months after the expiration date, and thereafter in each year on the anniversary date of the payment of the first installment.

(c) If at the expiration date the fixed tangible assets of the Sub-Concessionaire or any part thereof shall be mortgaged or charged, such mortgage or charge shall continue to attach to

such assets, but the depreciated replacement value thereof shall not be reduced by reason of such mortgage or charge and the following provisions shall apply: -

(I) The Main Concessionaire shall be entitled to withhold from such depreciated replacement value such sum as will be sufficient to repay the principal and interest secured by such mortgage or charge as and when the same shall become due, or a sum equal to the depreciated replacement value of the asset, whichever is the lower sum;

(II) In the event that the Main Concessionaire shall withhold such sum as aforesaid, it shall apply the same in repaying the principal and interest secured by the mortgage or charge or, if it deems fit, indemnify the Sub-Concessionaire within the limits of the amount withheld as aforesaid, against all claims and demands by the mortgagee or chargee in respect of such principal or interest as aforesaid; and the balance of the amount so withheld by the Main Concessionaire in respect of the fixed tangible assets of the Sub-Concessionaire shall be repaid to the Sub-Concessionaire in such installments, upon such dates and in such manner as in sub-clause (b) of this clause provided.

23. If at any time within the period of the Sub-Concession or thereafter, any doubt or dispute shall arise between the parties concerning the interpretation or execution of the Sub-Concession or anything connected therewith or concerning the rights and liabilities of the parties thereto, the same shall, failing any agreement to settle the doubt or dispute by other means and without taking into account whether or not there are any express provisions for the reference of the matter to arbitration under any other Clause of the Sub-Concession, be referred to the arbitration of two persons, to be appointed respectively by each party to the reference. The place of the arbitration shall be such as will be agreed between the parties and failing agreement shall be Jerusalem.

The provisions of the Arbitration Ordinance shall apply to the said arbitration.

Nothing in this Clause shall relieve the parties hereto from the necessity of obtaining the approval of the Finance Committee of the Knesset in matters in which such approval is required under the terms of the Sub-Concession.

24. The Sub-Concession shall not derogate from the duties of the Main Concessionaire to Government under the Main Concession or confer upon the Sub-Concessionaire any rights not conferred upon the Main Concessionaire under the Main Concession or relieve the parties hereto from the necessity of obtaining the approval of the Finance Committee of the Knesset in matters in which such approval is required under the terms of the Main Concession or the Sub-Concession.

25. Nothing herein provided shall be construed as conferring upon the Sub- Concessionaire the right to obtain mineral salts, minerals and chemicals from the Dead Sea, the leased lands or the reserved lands except for the purpose of producing bromine or bromine compounds, or shall adversely affect or restrict in any form whatsoever the rights of the Main Concessionaire under the Main Concession to obtain mineral salts, minerals and chemicals from the Dead Sea, the leased lands or the reserved lands for any purpose approved under the Main Concession other than the production of bromine or bromine compounds.

26. (a) The Main Concessionaire: -

(1) shall not transfer more than 49% of the issued share capital of the company holding the Sub-Concession, owned thereby.

(2) shall not transfer more than 49% of its voting rights in the company holding the Sub-Concession;

(3) shall not waive the right to appoint the majority of the board of directors of the company holding the Sub-Concession.

(b) If the Main Concessionaire shall be in breach of any one of the provisions of sub-clause (a) above, the validity of the Sub-Concession shall expire, unless such breach is effected with the prior consent of Government and the approval of the Finance Committee of the Knesset.

27. The Sub-Concession shall be binding upon the parties hereto and their assigns and substitutes.

28. (a) The receipt by the Main Concessionaire of any royalties, rent or other amount payable under the Sub-Concession shall not be deemed to imply a waiver by the Main Concessionaire of any of its rights in respect of any antecedent breach of any of the provisions of the Sub-Concession.

(b) No waiver by any party of any breach of any provision of the Sub-Concession shall be deemed to be a waiver of any subsequent breach of that provision or any other provision, whether of the same or of a different nature.

29. Whenever any notices, consents, applications, requests or communications (hereinafter called 'notices') are to be given under the Sub-Concession, the notices shall be in writing and shall be deemed to be duly given if mailed by prepaid registered post to the parties at the following addresses:

The Main Concessionaire at: Potash House, Beersheba.

The Sub-Concessionaire at: Potash House, Beersheba.

or to such other address within the State of Israel as any of the parties may designate by a similar notice to the other.

Any notice to be sent shall be deemed to have been served at the expiration of seventy-two hours from the posting of the letter containing such notice duly addressed.

30. The parties hereto hereby waive and agree to dispense with the necessity of any notarial notice in respect of any breach or default of any of the terms hereof.

31. The parties hereto agree that anything under this Sub-Concession permitted to be done or exercised by Government and any consent to be given by Government under the Sub-Concession, shall be properly done, exercised or given, if done, exercised or given by any person appointed by Government in that behalf.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals on the day and year first hereinbefore mentioned.

For and on behalf of
MIFALEI YAM HAMELAH B.M.

For and on behalf of
DEAD SEA BROMINE COMPANY LTD.

GOVERNMENT COMPANIES LAW

5735-1975

UPDATER TO THE SECOND EDITION

September 1994

The Government Companies (Amendment No. 8) Law 5744-1994 was passed on July 26, 1994, and published in *Sefer Ha-Chukkim* 1476, of August 4, 1994, p. 268. It introduces certain changes in sections 16A(1), 24(c) and 37(c).

The following three pages are intended to incorporate those provisions in our second edition of the translation of this Law. Please follow the instructions at the head of each page.

Arych Greenfield - A.G. Publications

INTRODUCTION

We here present a completely updated and consolidated English translation of the Government Companies Law 5735-1975, incorporating all amendments, up to and including Amendment No. 7. The more recent changes are of major current importance: they make provisions that govern the process of privatization of government owned bodies corporate.

As a rule, we base our work on *Laws of the State of Israel* (LSI), a series of yearbooks published by the Ministry of Justice. That series, however, is far from being up-to-date, and most of the amendments to the present Law are not yet available from that source. Large sections of the present text consequently were translated from the Hebrew original by Arych Greenfield, who also consolidated and edited the entire publication.

In order to keep costs within reason, we have used photostatic reproductions of those parts of the Law, which are

available in LSI. Because of that, type faces and format are not uniform throughout these pages; section headings, for instance, appear either as marginal notes or in bold type subtitles. However, we believe that this will not cause any difficulty, and that the translated text here presented is clear and will be useful.

Although great efforts have been exerted to assure the correctness, completeness and relevance of this English version, the translator, editor, publishers and distributors have made no warranty and can assume no responsibility whatsoever on that account.

Readers are also cautioned that no translation of Israel legal measures has any standing under Israel legal practice, the courts and other authorities will concern themselves only with the original and official Hebrew text. For this and other reasons readers are advised to consult qualified professional counsel before making any decision in connection with the Regulations, which are here presented in translation for their general information only.

Arych Greenfield - A.G. Publications

Copyright by
Arych Greenfield - A.G. Publications
P.O. Box 7422, 31070 Haifa, Israel
Tel. 972-4-255-104

GOVERNMENT COMPANIES
LAW 5735-1975

Definitions

1. (a) In this Law —

"Government company" - a company in which more than half the voting power at general meetings or the right to appoint more than half the Directors is held by the State or by the State together with a Government company or with a Government subsidiary company;

"Government subsidiary company" - a company in which more than half the voting power at general meetings or the right to appoint more than half the Directors is held by a Government company, a Government subsidiary company, or a Government company together with a Government subsidiary company;

"mixed company" - a company other than a Government company, in which half or less than half the voting power at general meetings or the right to appoint half or less than half the Directors is held by the State;

"company wholly owned by the Government" - a company, all the shares of which are owned by any of these: the State, a company all the shares of which are owned by the State; the State together with an aforesaid company, the State or an aforesaid company together with a local authority;

"appointment of Director" includes election or designation in any other manner;

"the Ministers" - the Minister of Finance, together with the Minister designated by Law as responsible for the affairs of the company;

"Committee" - the Knesset Finance Committee;

"Appointments Review Committee" - the committee set up under section 18B;

"Authority" - the Government Companies Authority, established by Law;

"basic documents" - memorandum and by-laws of a company;

"privatization" - acts, the objective of which - all at once or gradually - is one of the following:

(1) the elimination or reduction of the Government's part in the right to vote at general meetings of the company or of the right to appoint Directors in the company, or the elimination or reduction of any other Government involvement in the company, all if that contributes to conversion of a Government company to a mixed company, or to the conversion of the company into a company to which this Law does not apply, or to some other substantive change in the balance of power between members in the company, or to give the public or a new member in the company 10% or more of the voting rights in the company or the right to appoint a Director;

(2) the reduction - by 10% or more - of the government's part in the company's share capital;

(3) the substantial reduction of the company's activity, by a transfer of business and assets to others;

"Cabinet Committee" - Cabinet Committee Privatization said in section 59A;

"decision on privatization" - a decision under section 59B;

"company that undergoes privatization" - a company, in respect of which the Cabinet Committee has adopted a decision on privatization;

"Companies Ordinance" - the Companies Ordinance (New Version) 5743-1983;

Applicability of Companies Ordinance

2. Subject to the provisions of this Law, the Companies Ordinance shall apply to Government company, and the terms in this law shall have the meaning assigned to the same terms in the Companies Ordinance.

Overriding effect of this Law.

3. The basic documents cannot derogate from the provisions of this Law

Guidelines for Government company.

4. (a) A Government company shall act in accordance with the business considerations by which a non-Government company is normally guided, unless the Government, with the approval of the Committee, prescribes other considerations for acting. This provision shall not apply to a Government company the basic documents of which prohibit the distribution of profits.

(b) Where one of the objects of a Government company is to provide the public with commodities or services on a non-profit basis, the Government may decide that in pursuit of this object the company shall act in accordance with rules binding upon a person who carries out a public function under any law.

CHAPTER TWO: ESTABLISHMENT OF GOVERNMENT COMPANY AND CONVERSION OF COMPANY INTO GOVERNMENT COMPANY

Establishment of Government company.

5. (a) The establishment of a Government company requires a decision of the Government. The decision shall be taken upon the proposal of a Minister submitted to the Government together with an opinion form the Authority.

(b) Where the Government has decided to establish a Government company, the Minister of Finance shall bring the

decision to the knowledge of the Committee, indicating the sources from which investments in the company are to be financed and attaching the Authority's opinion.

(c) The Government shall prescribe rules for its examination of proposals for the establishment of Government companies and directives for the drawing up of the Authority's opinions. Such rules and directives shall be published in *Reshumor*.

Subjects to be dealt with in the Government's decision.

6. In a decision to establish a Government company, the Government shall determine, *inter alia* --

(1) the objects of the company, the structure of its share capital and the rights attached to different classes of shares;

(2) the total number of directors and the number of directors on behalf of the State;

(3) the Minister responsible for the affairs of the company.

Registration of company.

7. A company the basic documents of which show it to be a Government company shall not be registered unless a certificate by the Authority has been submitted to the Registrar of Companies attesting that the Government has decided to establish the company and that the basic documents conform with the Government's decision. Where a certificate as aforesaid has been submitted, the Registrar shall classify the company as a Government company.

Conversion of company into Government company.

8. (a) A transaction by the State as a result of which a non-Government company becomes a Government company requires a decision of the Government, and sections 5 and 6 shall apply *mutatis mutandis*.

(b) Where rights in a non-Government company which are capable of converting it into a Government company are

obtained by the Government otherwise than by way of a transaction, such company shall become a Government company after six months unless within that time the Government decides that the State shall waive or transfer those rights. In the absence of such a decision, the Government shall, within those six months, determine the particulars referred to in section 6, and the Minister of Finance shall bring them to the knowledge of the Committee.

(c) Where a non-Government company has become a Government company, the Authority shall submit to the registrar of Companies a certificate attesting such fact, indicating the Minister responsible for the affairs of the company.

Purchase of minority shares.

9. (a) Where a company has become a Government company under section 8, the State shall purchase the shares of the other shareholders who so desire, except redeemable preference shares.

(b) Within one month after a company becomes a Government company, the Authority shall notify the shareholders concerned of their right under this section, in the manner prescribed in the basic documents of the company for the giving of notice, and within three months after receipt of the notification a shareholder may notify the Authority that he desires the State to purchase all or part of his shares. The Ministers may extend the times with the approval of the Committee.

(c) The price of the shares shall be their value immediately before the company became a Government company. In the absence of agreement between the parties, such value shall be determined by a person appointed in that behalf by the President of the District Court of Jerusalem, and the Authority shall notify his determination to the shareholder. The price

shall, unless otherwise agreed upon, be paid upon the transfer of the shares to the State.

(d) Within fourteen days after the Authority has notified him of the determination of the value of his shares under subsection (c), a shareholder may withdraw his notification under subsection (b).

(e) The provisions of this section shall also apply, mutatis mutandis, where the Government has decided as specified in section 4(a) or 15.

Investments in Government company.

10. The Government shall make no investment in a Government company save with the approval of the Committee.

Decisions requiring Government approval.

11. (a) Decisions of a Government company in the following matters require the approval of the Government:

(1) a change in the objects of the company;

(2) an increase of the registered share capital;

(3) a change in the rights attached to the shares;

(4) an allotment of shares of the company, or consent to a transfer of shares where consent is required under the basic documents, if such an allotment or transfer will materially change the balance of power between members of the company or confer upon a new member 10 per cent or more of the nominal value of the share capital or of the voting power in the company or the right to appoint a director.

(5) the issue of redeemable preference shares;

(6) the issue of debentures convertible into shares and the conversion into shares of debentures issued without conversion rights or of a loan received by the company;

(7) the conversion of the company from a non-private company into a private company or vice versa;

(8) a reorganization or voluntary winding-up of the company, a compromise, an arrangement or amalgamation with another company;

(9) the establishment of a company, alone or with others, and the acquisition of shares in an existing company, except the acquisition of shares on the stock exchange by a company the ordinary business of which includes acquisition as aforesaid;

(10) an act as shareholder in a Government subsidiary company with respect to one of the matters referred to in paragraphs (1) to (9);

(11) an undertaking to effect one of the acts referred to in paragraphs (1) to (10).

(b) Government approval under subsection (a) shall be decided upon on a proposal of the Ministers, submitted to the Government with the opinion of the Authority. The Minister of Finance shall bring the Government's decision to the knowledge of the Committee. The provisions of section 5(c) shall also apply to approval under this section.

(c) Where the Government has approved a decision on any of the matters referred to in subsection (a), the Authority shall give the company a certificate to such effect. A copy of the certificate shall be submitted to the Registrar of Companies.

(d) Where a decision on any of the matters referred to in subsection (a) requires registration under the Companies Ordinance, the Registrar of Companies shall not register it unless a copy of the said certificate has been submitted to him.

Company ceasing to be Government company.

12. Where a Government company has become a non-Government company, the Authority shall submit a certificate to such effect to the Registrar of Companies.

Certificates of the Authority and appeal.

13. (a) A certificate of the Authority under section 7, 8, 11 or 12 shall be *prima facie* evidence of what is stated therein.

(b) A person who considers himself aggrieved by a certificate of the Authority under section 8 or 12 and who alleges that the company has not become a Government company or that the Government company has not become a non-Government company, as the case may be, may appeal to the District Court of Jerusalem. The period of appeal and the appeal procedure shall be prescribed by the Minister of Justice by regulations.

Winding-up of Government company.

14. (a) The Government may bring about the voluntary winding-up of a Government company or the sale of shares held in it by the State if one of the following appears to it to be the case:

(1) the objects of the company have been achieved or cannot be achieved or cannot be achieved economically or efficiently;

(2) the objects of the company have been assigned to a statutory authority or another Government company.

in subsection (a) - a Government company should be wound up or that shares held by the State should be sold, and if no Minister proposes that to the Government, then the Authority shall express its opinion in a reasoned memorandum to the Minister of Finance and to the Government.

Amalgamation of Government companies

15. (a) The Government may amalgamate two or more Government companies, if it appears that their objectives essentially coincide or complement each other, or that they may be attained more economically or more efficiently by a single company.

(b) The provisions of section 14(b) and (c) shall also apply, *mutatis mutandis*, to this section.

Sale of shares of Government subsidiary company

15A. (a) A decision by a Government company to sell the shares it holds in its Government subsidiary company is subject to ratification by the Government and the Committee.

(b) The Government's decision of approval under subsection (a) shall be reached in accordance with a proposal by the Ministers, submitted to the Government together with the Authority's opinion.

(c) The provisions of this section shall not apply to sales on an exchange of shares there registered for trading, if the total of shares sold on an exchange in one balance sheet year does not exceed 5% of the nominal value of the subsidiary company's issued and paid up shares, and if the total consideration in one balance sheet year does not exceed NS10 million, provided the sale does not convert a Government subsidiary company into a company that is not a Government subsidiary company.

(d) The amount said in subsection (c) shall be changed on April 1 of each year, beginning with fiscal year 1990, at the rate of increase of the consumer prior index from the index published for February 1989 to the index last published before the day of the change.

Chapter Three: DIRECTORS

Definition

16. In this chapter, "Director" - a Director on behalf of the State in a Government company.

Qualifications

16A. An Israel resident who has at least reached age 25, and for whom one of the following holds true, is qualified to serve as Director of a Government company.

(1) he holds an academic degree in one of the following subjects: economics, business administration, law, auditing, public administration, engineering or labor studies, or he holds an academic degree or completed other university level studies, all in the field of the company's major activity; (2) he has at least five years experience in one of the following, or has an aggregate of five years experience in two or more of the of following:

(a) in a ranking business management position of a body corporate with a significant volume of business;

(b) in a ranking public office or in a ranking position in the public service on economic, commercial, administrative or legal subjects;

(c) in a ranking position in the field of the company's major activity.

Restrictions

17. (a) The following are not qualified to be Directors:

(1) a Minister, a Deputy Minister and a Knesset member;

(2) an employee of the company and a person engaged in its service, except the general manager and an elected representative of the company's employees; for this purpose, the chairman of the company's Board of Directors shall not be deemed a company employee;

(3) a member of the public, whose other business may create conflicts of interest with his tasks as Director of the company;

(4) the Director and employees of the Authority, except if the company is in the process of winding up or of liquidating its business;

(5) a person convicted of an offense which - in the Attorney General's opnion - involves moral turpitude or would have required him not to be appointed;

(6) a person disqualified from serving as Director of a company under the Companies Ordinance (New Version) 5743-1983, or under any other enactment.

(b) No person shall be Director of more than two companies, except in cases prescribed by the Minister of Finance by regulations, in consultant with the Authority and with the Committee's approval.

(c) The Minister of Finance may - in consultation with the Authority and with approval by the Committee - prescribe by regulations

(1) repealed

(2) how many directors shall be members of the public and how many State employees;

(3) rules under which an elected representative of the company's employees shall be appointed Director, and the kinds of companies in which such a Director shall serve.

(d) The number of Directors who are State employees shall not exceed two thirds of the total number of Directors appointed as representatives of the Government.

Disqualification because of economic links

17A. (a) Without derogating from the generality of the provisions of section 17(a)(3), no person shall be appointed Director - whether from among the general public or from among Government employees - if he has any economic link with the company or with a body corporate connected with the company, or if he has any personal link with the management of the company or of a body corporate connected with the company.

(b) For purposes of this subsection -

"economic link with the company or with a body corporate connected with the company" - the direct possession

of one percent - or of a significant quantity that is less than that - of securities of the company or of a body corporate connected with the company, or the right to appoint a Director in the company or in a body corporate connected with the company;

"body corporate connected with the company" - a body corporate that holds 50% or more of the nominal value of the company's issued capital or of voting rights in it, or that may appoint half or more of the Directors or its general manager, and also a body corporate in which the company holds aforesaid rights;

"personal link with the management" of the company or of a body corporate connected with the company also exists when a person is a relative of a Director or of the general manager or of a ranking employee of the company or of a body corporate connected with the company, for this purpose, "relative" - spouse, sibling, parent, offspring, spouse's offspring and the spouse of each of these.

Appointment

18. (a) A Director shall be appointed by the Ministers after consultation with the Appointments Review Committee. If the Appointments Review Committee decides not to recommend appointment of a candidate to whom the provisions of section 18C(a) apply, the Minister may make objection to the decision before the Government plenum; the Committee's reasons shall be presented to the Government by the Attorney General or his representative; if the Government does not accept the Minister's objection, then the candidate shall not be appointed Director.

(b) The letter of appointment shall be delivered to the Director by the Ministers after the opinion of the Appointments Review Committee has bee received, and a copy thereof shall be delivered in the company through the Authority.

(c) The appointment shall be in effect from the date on which the letter of appointment was delivered to the company, unless another date is prescribed therein.

Proper representation of both sexes

18A. (a) The composition of the Board of Directors of a Government company shall give proper expression to the representation of both sexes.

(b) Until such proper expression is reached, the Ministers shall appoint - as far as possible under the circumstances of the case - Directors of the sex which at that time is not properly represented on the company's Board of Directors.

Appointments Review Committee

18B. (a) The Minister of Finance shall appoint an Appointments Review Committee, composed as said below, to review the qualifications and suitability of candidates for the positions of Director, chairman of the Board of Directors or general manager in a Government company:

(1) the chairman of the Committee shall be a representative appointed by the Attorney General, qualified to serve as judge of a District Court, and he shall be from among Government or public service employees, and he may be a person who formerly served as judge or retired from the Government or public service;

(2) a public personality, chosen by the chairman of the Committee from a list - composed for this purpose by the Ministers of Finance and of Justice - of public personalities who meet the qualifications set in this Law for a chairman of a Board of Directors, and who have no personal, business or political link with any Cabinet member;

(3) a representative of the Government Companies Authority.

(b) The quorum for meetings of the Committee shall be the chairman and an additional member; in case of a tie vote, the chairman shall have the casting vote; the Committee shall set its own procedures, as far as they are not prescribed by this Law.

(c) The following are the Committee's responsibilities:

(1) to examine whether a candidate for the position of Director, chairman of a Board of Directors or general manager meets the qualifications said in sections 16A, 24(c) or 37(c),

as the case may be, and if he is not disqualified under the term of sections 17 and 17A:

(2) to determine where it is appropriate to appoint him in accordance with the provisions of section 18C;

(3) to advise the Ministers on the degree of a candidate's suitability for a position, also taking into account the company's special needs, its size and the composition of the Board of Directors at the time of the appointment, and taking into consideration the candidate's ability to devote the time necessary to the position for which he is being considered;

(4) the Committee shall communicate its opinions on the matters said in paragraphs (1) to (3) to the Ministers in writing;

(5) in order to perform its tasks under this Law, the committee may require written particulars about the candidate, his history, education and occupation, and it may also require information or an opinion from the Authority.

Special qualifications

18C. (a) If the Appointments Review Committee finds that a candidate for the position of Director, chairman of the Board of Directors or general manager in a Government company has a personal, business or political link with any Cabinet member, then it shall not recommend his appointment unless it finds that he has special qualifications in the company's field of activity, or that be has some other special qualification, in addition to the qualifications required under this Law for that position.

(b) For purposes of this Law, mere membership in a political party shall not be deemed a personal or political link.

(c) The provisions of section 16A shall not apply to an elected representative of the company's employees who is appointed Director, provided he reached age 25 by the day on which he is appointed.

Remuneration and expenses

19. The Ministers of Finance may, in consultation with the Authority and with approval by the Committee, make

regulations on the remuneration and expenses payable to a Director.

Obligation to give information

20. (a) Notwithstanding any other Law, a Director shall - when requested - give the Ministers and the Authority information on the affairs of the company and on his activities in it.

(b) If a Director becomes aware of anything in the company, which *prime facie* indicates the violation of any Law or of moral standards, he shall being the matter without delay to the attention of the chairman of the Board of Directors, the Ministers, the Authority and the State Comptroller.

Term of tenure

21. A Director shall be appointed for a term of not more than three years from the day on which his appointment went into effect. A Director who has ceased to hold office may be reappointed.

Termination of tenure

22. (a) A Director shall cease to hold office before the end of the term for which he was appointed, if -

(1) he resigned by delivering a letter of resignation to the Ministers; the Ministers may delay the effect of the resignation by not more than one month;

(2) he was absent from four consecutive meetings of the Board of Directors or from six meetings in one year, unless the Ministers - after consultation with the Authority - declared by notice to the company that the absence was justified;

(3) he is unable to perform his tasks and the Ministers - after consultation with the Authority - so notified the company;

(4) he was convicted of an offense which - in the Attorney General's ability to comply with a lawful instruction or request under sections 59D or 59E; the Authority shall inform the company of this matter.

(b) If a Director was appointed while he was a State employee or an employee of another Government company, and if he ceases to be an employee as aforesaid, then he shall cease to hold office on the day on which the Authority so notifies the company, but the Ministers - after consultation with Authority - may reconfirm his appointment.

(c) When the Government has sold shares it held in a Government company, then some or all of the Directors shall cease to hold their positions from the day announced by the Authority to the Company, if that is required by the sale transaction; if the sale transaction requires that only some of the Directors cease to hold their office, then the Ministers shall decide - after consultation with Appointments Review Committee - which of the Director shall cease to hold office.

Suspension

23. If a Director is suspected of an offense which - in the Attorney General's opinion - involves moral turpitude, then the Ministers may suspend him by notice to the company, and they may appoint a substitute for him for the period of his suspension.

Filling the quorum

23A. If the number of members of a Board of Directors entitled in participate in its meetings drops to fewer than its quorum and this situation continues for more than 30 days, or if the number of members drops to fewer than the minimum number set by the company's by-laws and this situation continues for more than 60 days, then the Government may - after consultation with the Appointments Review Committee - appoint one or more Directors, in the number required to reach the quorum.

Chapter Four: BOARD OF DIRECTORS

Article One: Chairman of the Board of Directors

Election

24. (a) The Board of Directors of a Director company shall elect one of its members to be its chairman; the election requires approval by the Ministers, after consultation with the Appointments Review Committee; however, the Government may, after consultation with the Appointments Review Committee, appoint the chairman of the Board of Directors from among its members, if it deems it necessary to do so.

(b) The general manager of a company shall not be the chairman of its Board of Directors.

(c) A person shall be qualified to serve as chairman of the Board of Directors of a Government company if he meets the provisions of section 16A, provided be meets the conditions in paragraph (1) and also one of the conditions of paragraph (2) of that same section; however, in exceptional cases it is permissible to choose a person who does not meet the condition set in paragraph (1) of that section, if has at least twelve years experience in posts said in paragraph (2) of that section, at least six years of that in bodies with a scale of activity no smaller than that of the body in which he is to be appointed, and if the Appointments Review Committee certified that there are special reasons for the aforesaid choice.

(d) When a Board of Directors of a Government company has chosen a person to be chairman of the Board of Directors, but the Appointments Review Committee decided not to recommend his appointment because the provisions of section 18(a) apply to him, then the Minister shall not approve the appointment, unless he objected to the decision and his objection was approved by the Government plenum; the provisions of section 18(a) shall apply to the said objection.

CHAPTER FOUR: BOARD OF DIRECTORS

Article One: Chairman of the Board of Directors

Election

24. (a) The Board of Directors of a Director company shall elect one of its members as its chairman; the election requires approval by the Ministers, after consultation with the Appointments Review Committee; however, the Government may, after consultation with the Appointments Review Committee, appoint the chairman of the Board of Directors from among its members, if it deems it necessary to do so.

(b) The general manager of a company shall not be the chairman of its Board of Directors.

(c)A person shall be qualified to serve as chairman of the Board of Directors of a Government company if he meets the provisions of section 16A, provided he meets the conditions in paragraph (1) and also one of the conditions of paragraph (2) of that same section.

(d) When a Board of Directors of a Government company has chosen a person to be chairman of the Board of Directors, and the Appointments Review Committee decided not to recommend his appointment because the provisions of section 18C(a) apply to him, then the Minister shall not approve the appointment, unless he objected to the decision and his objection was approved by the Government plenum; the provisions of section 18(a) shall apply to the said objection.

Obligation to make report

25. Notwithstanding any other Law, the chairman of the Board of Directors shall deliver to the Ministers and to the Authority - once in six months and at any time requested - a written report on the company's activity and on the work of its Board of Directors.

Article Two: Work of the Board of Directors

Times of meetings.

26. (a) Meetings of the board of directors of a Government company shall take place according to the requirements of the company but at least once in two months, unless the Ministers, after consultation with the Authority, prescribe other times according to the nature of the company's business.

(b) The board of directors shall hold a special meeting if the Ministers, the Authority or a director so request or requests. The meeting shall be held within seven days from the date of the request unless it has been requested that it be held within a shorter time. The meeting shall deal with the matters specified in the request and its decisions shall forthwith be brought to the knowledge of the Ministers and the Authority.

Convening and agenda of meeting.

27. (a) The chairman of the board of directors shall convene meetings of the board and shall, subject to the provisions of section 26, prescribe the time, place and agenda thereof.

(b) Invitations to meetings of the board of directors shall also be delivered to the Authority. The Authority may send to each meeting a representative, who may take part in the meeting and whose status thereat shall be that of a director, except that he shall not be counted in the quorum and shall have no voting rights.

Quorum and majority.

28. Unless otherwise provided in the basis documents of the company, a quorum at meetings of the board of directors shall be a majority of the members thereof including at least one director on behalf of the State, decisions shall be passed by a majority of the votes of those taking part in the voting, and in the event of an equality of votes the chairman shall have a casting vote.

Committees.

29. (a) The board of directors may set up from among its members permanent and *ad hoc* committees.

(b) The provisions of section 27(b) shall also apply to meetings of a committee.

(c) The summings-up of a committee shall be regarded as recommendations to the board of directors, which may adopt, vary or reject them.

Audit committee

29A. (a) The Board of Directors shall appoint an audit committee of no fewer than three from among its members.

(b) Notwithstanding the provisions of section 29(c), the effect of the audit committee's decisions on matters enumerated in Chapter Four "A" of the Companies Ordinance (New Version) 5743-1983 shall be as is prescribed there.

Delegation of powers

30. (a) The Board of Directors may delegate any of its powers to one or more of its members or to a committee of its members or to the general manager, except for the power under section 32 and a power in respect.

(2) request—from the auditor and the internal auditor of a company or its subsidiary—a report on that company.

(b) Copies of a report delivered to the Board of Directors under subsection (a)(2) shall be delivered to the general manager and the Authority.

Chapter Five: GENERAL MANAGER

Appointment

37. (a) The Board of Directors of a Government company shall appoint the general manager; the appointment shall require approval by the Ministers after consultation with the Appointments Review Committee; however, the Government may appoint a general manager, if it deems it necessary to do so.

(b) A Minister, Deputy Minister or Knesset member shall not be the general manager of a Government company.

(c) A person shall be qualified to serve as general manager of a Government company if he meets the provisions of section 16A, provided he meets the conditions in paragraph (1) and also one of the conditions of paragraph (2) of that section, and provided the provisions of section 17(a), paragraphs (1), (3), (5) and (6) do not hold for him; however, in exceptional cases it is permissible to choose a person who does not meet the condition set in paragraph (1) of that section, if he has at least twelve years experience in posts said in paragraph (2) of that section, at least six of that in bodies with a scale of activity no smaller than that of the body in which he is to be appointed, and if the Appointments Review Committee certified that there are special reasons for the said choice.

(d) If the Board of Directors of a Government company chose a person to be general manager, but the Appointments Review Committee decided not to recommend his appointment because the provisions of section 13C(a) apply to him, then the Minister shall not approve the appointment, unless he made objection against the decision and it was approved by the Government plenum; the provisions of section 13(a) shall apply to the said objection.

Property declaration

38. A person who has been appointed general manager of a Government company shall, at a time and in a manner and form prescribed by regulations, declare the assets, liabilities and sources of income of himself, of his spouse who lives with him and of his children whom he supports. He shall also declare, as aforesaid, any material changes in these data.

Functions

39. The general manager is responsible for the day-to-day conduct of the affairs of the company within the framework of the budget and plans adopted under section 32(a)(2) and of the decisions of the Board of Directors.

Powers

40. (a) The general manager shall have all the powers that may be conferred on a manager under the Companies Ordinance and under the basic documents of the company, except the powers vested by this law in the Board of Directors or in any other authority.

(b) The general meeting may limit or restrict the powers of the general manager, and so may the Board of Directors. A decision to do so shall be submitted to the Registrar of Companies and the Authority.

Duty to Report

41. (a) The general manager shall, without delay, inform the chairman of the Board of Directors of any material matter of the company, which concerns the functions of the Board of Directors. If the matter exceeds, or is likely to exceed, what has been determined by the Board of Directors under section 32(a) or if it is one of the matters enumerated in section 35, then the chairman of the Board of Directors shall without delay convene a meeting thereof and of the financial reports, consider each item in respect of which the auditor has expressed a reservation, made an observation or refrained from expressing an opinion;

(7) approve the grant of loans and deposit of moneys which deviate from the ordinary course of the company's business:

(8) consider any matter which the Minister or the Authority have or has requested to be put on the agenda or of which the general manager has given notice under section 41:

(b) The Minister of Finance may, on the recommendation of the Authority, prescribe rules for the drawing up of the budgets and plans referred to in subsection (a) (2) either for Government companies generally or for particular categories thereof.

Financial reports.

33. (a) The board of directors shall each year see to the drawing up of the following reports:

(1) a balance sheet;

(2) a profit-and-loss account, including the purposes to which profits are to be applied:

(3) a report of the company's resources and the manner of their use;

(4) in the case of a company which has a subsidiary company - consolidated financial reports unless, in the opinion of the board of directors and the Authority, the character of the activities of the companies or the date of the drawing up of their financial reports does not permit the same.

(b) The Minister of Finance may require a Government company to draw up an additional financial report and may prescribe a date for its submission.

(c) A decision of the board of directors as to the application of the profits of the company shall require the approval of the Authority. Where the Authority objects to the decision of the board of directors, the issue shall be referred to the Minister for determination, and if a decision on privatization was adopted in respect of the company, then the disagreement shall be brought before the Minister of Finance for decision.

(d) The provisions of this section shall not derogate from the provisions of any other law as to the drawing up of financial or other reports.

Submission of documents.

34. (a) The chairman of the board of directors shall submit to the Ministers and the Authority -

(1) drafts of the budget and plans referred to in section 32(a)(2), and drafts of the reports referred to in section 33(a), one month before the date for consideration thereof unless the Ministers, in consultation with the Authority, have prescribed a shorter period;

(2) the documents referred to in paragraph (1), immediately after the board of directors has approved them;

(3) a copy of the minutes of meetings of the board of directors, within two weeks from the meeting concerned.

(b) The documents referred to in subsection (a) shall also be submitted to the State Comptroller, as well as to the

Committee at its request.

(c) The Ministers may direct in respect of a particular Government company that any of the documents referred to in subsection (a) shall be kept as they may direct and shall only be delivered to persons indicated in their direction, and the Minister of Defence may so direct if he considers that reasons of State security so require; a direction under this subsection shall not derogate from the provision of subsection (b).

Duty to notify and restriction on decisions.

35. (a) Where the chairman of the board of directors becomes aware of any matter of the company which, *prima facie*, an infringement of any law or of moral standards or any other similar defect, he shall without delay bring such matter to the knowledge of the Ministers, the State Comptroller and the Authority, unless they have been notified thereof under section 20(b), and shall without delay convene a meeting of the board of directors for deliberation and the determination of modes of action; but the board of directors shall not decide upon the matter before the said authorities have been given a period of fourteen days to express their opinion.

(b) The provisions of this section shall not derogate from a duty of notification under any other law.

Obtaining information.

36. (a) The board of directors may, whenever it deems it necessary -

(1) request of the general manager of a subsidiary of the company information as to any matter which in its opinion relates to the affairs of the subsidiary company;

(2) request of the auditor and the internal controller of a company or of a subsidiary thereof a report as to that company.

(b) Copies of a report delivered to the board of directors under subsection (a)(2) shall be delivered to the general manager and the Authority.

Chapter Five: GENERAL MANAGER

Appointment

37. (a) The Board of Directors of a Government company shall appoint the general manager; the appointment shall require approval by the Ministers after consultation with the Appointments Review Committee; however, the Government may appoint a general manager, if it deems it necessary to do so.

(b) A Minister, Deputy Minister or Knesset member shall not be the general manager of a Government company.

(c) A person shall be qualified to serve as general manager of a Government company if he meets the provisions of section 16A, provided he meets the conditions in paragraph (1) and also one of the conditions of paragraph (2) of that section, and provided the provisions of section 17(a), paragraphs (1), (3), (5) and (6) do not hold for him.

(d) When a Board of Directors of a Government company has chosen a person to be general manager, and the Appointments Review Committee decided not to recommend his appointment because the provisions of section 18C(a) apply to him, then the Minister shall not approve the appointment, unless he made objection against the decision and it was approved by the Government plenum; the provisions of section 18(a) shall apply to the said objection.

Property declaration

38. A person who has been appointed general manager of a Government company shall, at a time and in a manner and form prescribed by regulations, declare the assets, liabilities and sources of income of himself, of his spouse who lives with him and of his children whom he supports. He shall also declare, as aforesaid, any material changes in these data.

Functions

39. The general manager is responsible for the day-to-day conduct of the affairs of the company within the framework of

the budget and plans determined under section 32(a)(2) and of the decisions of the board of directors.

Powers

40. (a) The general manager shall have all the powers that may be conferred on a manager under the Companies Ordinance and the basic documents of the company, except the powers vested by this Law in the board of directors or any other authority.

(b) The general meeting may limit or restrict the powers of the general manager, and so may the board of directors. A decision to do so shall be submitted to the Registrar of Companies and the Authority.

Duty to Report

41. (a) The general manager shall without delay notify the chairman of the board of directors of any material matter of the company which concerns the functions of the board of directors. If the matter exceeds, or is likely to exceed, what has been determined by the board of directors under section 32(a), or is one of the matters enumerated in section 35, the chairman of the board of directors shall without delay convene a meeting thereof and shall place the notification before it.

(b) The general manager shall deliver to the board of directors, at the times prescribed by it, a report on the day-to-day activities of the company.

Termination of tenure

42. (a) The general manager shall cease to hold office if -

(1) he resigns by delivering a letter of resignation to the chairman of the Board of Directors; or

(2) the Government removes him from office; or

(3) the Board of Directors removes him from office by a decision of a majority of those participating in the vote; or

(4) the Board of Directors finds, during the first year of his tenure, that he is not suited to his position; or

(5) the Board of Directors finds that he is permanently unable to perform his tasks; or

(5a) the Cabinet Committee decides, on the recommendation of the Minister of Finance and in accordance with

an opinion by the Authority, that he does not perform his task in a manner designed to advance implementation of the decision on privatization, or that he acted - in deed or by omission - in a manner designed to detract from the company's ability to comply with a lawful instruction or request under sections 59D or 59E;

(6) he is convicted of an offense which - in the Attorney General's opinion - involves moral turpitude and requires discontinuation of his tenure; or

(7) he becomes disqualified for his position according to the Companies Ordinance or any other Law; or

(8) the company is wound up.

(b) The tenure of the general manager shall terminate -

(1) in case of resignation - three months after the day on which his letter of resignation was delivered, unless the Board of Directors prescribes an earlier date;

(2) in any of the cases said in subsection (a)(2) to (5a) - on the day prescribed in the decision;

(3) in the case said in subsection (a)(6), upon delivery of notice to the chairman of the Board of Directors;

(4) when the company is being wound up - when winding up begins.

(c) When the tenure of a general manger has terminated, the Board of Directors shall appoint an acting general manager, pending the appointment of a general manager under section 37, and if the tenure terminated under subsection (a)(5a), then the appointment of an acting general manager requires the Authority's approval.

Suspension

43. (a) The Board of Directors may suspend a general manager, if it has reason to suspect that he committed a criminal offense which caused damage to the company, and it shall suspend him if information has been filed against him for an offense, which in the Attorney General's opinion justifies suspension.

(b) When the general manager has been suspended the Board of Directors may appoint an acting general manager for the period of his suspension.

Chapter Six: HOLDERS OF SPECIAL OFFICES

Article One: Auditor

Appointment and remuneration

44. (a) The appointment of an auditor for a Government company shall require the approval of the Authority.

(b) A member of the Knesset shall not be an auditor of a Government company and shall not be a partner in a partnership, or a shareholder in a body corporate, which is an auditor of a Government company.

(c) The Minister of Finance, together with the Minister of Justice, may, with the approval of the committee, prescribe rules as to -

(1) the modes of appointing, and of annulling the appointment of, an auditor of a Government company;

(2) conditions and qualifications for the appointment;

(3) the apportionment of appointments to Government companies among qualified auditors;

(4) the length of time that an auditor may serve with a Government company.

(5) the remuneration of auditors of Government companies.

Duty to Report.

45. Notwithstanding anything provided in any other law, the auditor of a Government company shall, at the request of the board of directors, the Ministers or the Authority, deliver to it or them information as to the affairs of the company, carry out a special inspection with the company and deliver to it or them a report of the results thereof.

Replacement.

46. A Government company shall not annul the appointment of an auditor during his period of tenure unless the Authority

has given him an opportunity to be heard before it and has approved the annulment.

Article Two: LEGAL ADVISERS

Appointment and remuneration.

47. (a) The appointment of a legal adviser to a Government company shall require the approval of the Authority.

(b) A Member of the Knesset shall not be a legal adviser to a Government company and shall not be a partner in a partnership, or a shareholder in a body corporate, which is a legal adviser to a Government company.

(c) The Minister of Finance, together with the Minister of Justice, may, with the approval of the Committee, prescribe rules as to -

(1) the modes of appointing, and of annulling the appointment of, a legal adviser to a Government company;

(2) conditions and qualifications for the appointment;

(3) the apportionment of appointments to Government companies among qualified advocates;

(4) the length of time that an advocate may serve as a legal adviser to a Government company;

(5) the remuneration of legal advisers to Government companies.

Article Three: INTERNAL CONTROLLER

Appointment.

48. The board of directors of a Government company shall appoint an internal controller for the company unless the Authority certifies that the volume or character of the company's activities does not necessitate the appointment of an internal controller.

Powers and status.

49. (a) The board of directors shall prescribe the functions and power of the internal controller.

(b) The internal controller shall be subordinate to the chairman of the board of directors and the general manager

and shall submit his reports and proposals to the board of directors.

Applicability

49A. If the provisions of section 96A of the Companies Ordinance (New Version) 5745-1985 hold true for a Government company, then the provision of section 96WI shall apply, even if its is an inspected body.

Article Four: REPRESENTATIVE OF THE STATE AT GENERAL MEETING

Appointment and instructions.

50. (a) The Minister shall appoint a representative of the State to take part in and vote at the general meeting of a Government company by virtue of the shares the State holds therein.

(b) Notice of the date of a general meeting shall be given to the Authority at least two weeks in advance unless the Authority has agreed to a shorter period.

(c) The Ministers may, after consultation with the Authority, instruct the representative how to vote at the general meeting.

Chapter Seven: GOVERNMENT COMPANIES AUTHORITY

Establishment of authority.

51. There is hereby established a "Government Companies Authority".

Director of authority.

52. (a) The functions of the Authority shall be carried out by the Director of the Authority.

(b) The Director of the Authority shall be appointed by the Government upon the proposal of the Minister of Finance. Notice of the appointment shall be published in *Reshumot*. The duty of announcing the vacancy under section 19 of the

State Service (Appointments) Law, 5719-1959), shall not apply to the appointment.

Advisory Committee.

53. (a) The Minister of Finance shall appoint an Advisory Committee to the Director of the Authority. Notice of the appointment and composition of the Committee shall be published in *Reshumot*.

(b) The Director of the Authority shall consult with the Advisory Committee on matters relating to Government companies generally or to particular categories thereof.

Functions of Authority.

54. The Authority shall -

(1) advise the Government, through the Minister of Finance and the Ministers, on matters relating to Government companies;

(2) in accordance with directives from the Government, deal with matters common to all Government companies or to particular classes thereof;

(3) follow up and assist in the implementation of the State Comptroller's recommendations relating to Government companies;

(4) advise and assist Government companies in the conduct of their business;

(5) follow up continuously the activities of each Government company, the implementation of its objects, the course of its business, its financial position and its wage policy and communicate its findings to the Ministers;

(6) examine the reports submitted to it by a Government company and the material on which they are based and make its comments thereon to the company and the Ministers;

(7) deal with and assist in the establishment, winding-up and amalgamation of Government companies, as well as in compromise settlements and arrangements and the reorganization and the sale of shares thereof;

(7a) advise the Cabinet Committee on matters connected with privatization and deal with the implementation of decisions on privatization;

(8) to perform, in respect of a Government company, any function with which it is charged by the Government of by the Ministers;

(9) to perform any other function with which it is charged by this Law.

Obtaining information

55. For purposes of performing its functions, the Authority may request of a Government company and also of a Director on behalf of the State or of the general manager of a Government company - and through him of any person employed by or engaged in the service of the company - information and material on the affairs of the company and may inspect records and documents of the company.

Duty to report.

56. (a) The Authority shall deliver a report on its activities to the Government, through the Minister of Finance, and to the Committee, at the request of each, but at least once a year.

(b) The Authority shall once a year deliver to the Minister of Finance a report on Government companies, setting out, in respect of each, the rights of the State therein, the principal objects thereof, the holders of office therein and the main content of its last financial reports. The Minister of Finance shall bring the report before the Committee.

Chapter Eight: SUBSIDIARY, MIXED AND FOREIGN COMPANIES

Application of Law to subsidiary companies

57. This Law shall apply to a Government subsidiary company in like manner as it applies to a Government company, subject to the following provisions:

(1) the Minister responsible for the affairs of the parent company is also the Minister responsible for the affairs of the subsidiary company;

(2) a decision of a subsidiary company requiring the approval of the Government under section 11 shall be brought before the Ministers through the parent company for the purpose of obtaining the said approval, and a document which a subsidiary company has to submit to the Ministers, the Authority or some other addressee shall be submitted through the parent company.

(3) a Director of a subsidiary company on behalf of the parent company shall be appointed by the Board of Directors of the parent company; the appointment requires approval by the Ministers, after consultation with the Appointments Review Committee; the provisions of sections 16A, 17, 17A, 18A and 18C shall also apply to a said Director;

(4) information given under section 20 by a Director of a subsidiary shall also be given to the chairman of the Board of Directors of the parent company.

(5) a letter of resignation of a Director of a subsidiary shall also be delivered to the chairman of the Board of Directors of the parent company, and notice by the Ministers under section 22(a)(2) to (6) shall also be given to the parent company.

(6) if the Government sold shares which it held in the parent company, or if the parent company sold shares that it held in the subsidiary, then some or all of the Directors of the subsidiary who were appointed on behalf of the parent company shall cease to hold their positions from the day announced by the Authority to the company, if that is required by the sale transaction; if the sale transaction requires that only some of the said Directors cease holding their office, then the Ministers shall decide - after consultation with the Appointments Review Committee - which of the Directors shall cease to hold office.

Application of Law to mixed companies.

58. (a) The following provisions shall also apply, *mutatis mutandis*, to a mixed company.

(1) sections 5 and 6, for the purpose of the establishment of the company;

(2) section 8, for the purpose of the conversion of a non-Government company into a mixed company;

(3) section 14, for the purpose of the sale of shares in the company held by the State;

(4) Chapter Three, for the purposes of directors-on-behalf-of-the-State;

(5) section 50(a) and (c), for the purpose of the representation of the State at a general meeting of a mixed company;

(6) sections 54(1), 54(7a) and 56(b), for the purposes of the Authority; in order to perform its functions, the Authority may request information and material on the affairs of the company from a Director on behalf of the State in a mixed company;

(7) for purposes of privatization - Chapter Eight "A", except for sections 59B(a)(4) and 59E.

(b) The Authority shall examine any information and material received by it concerning a mixed company and shall make its comments to the Ministers and to a director-on-behalf-of-the-State.

(c) The provisions of subsection (a)(2) and (3) shall not apply to the purchase and sale of shares on the stock exchange.

Application of provisions to foreign company.

59. (a) The following provisions shall also apply, *mutatis mutandis*, to a company incorporated outside Israel (hereinafter referred to as "a foreign company"):

(1) sections 5 and 6, in respect of the establishment of a foreign company which, if it were established in Israel, would be a Government company or a Government subsidiary company;

(2) section 8, in respect of the conversion of a foreign company into a company which, if it were an Israeli company, would be a Government company or a Government subsidiary company;

(3) sections 17 to 23, in respect of the directors-on-behalf-of-the State of a foreign company, in so far as those sections

are not repugnant to the basic documents of the company or to the laws of the country in which it is incorporated.

(b) A representative of the State at a general meeting of a foreign company shall, with regard to matters referred to in section 11(a), vote only in accordance with instructions from the Ministers. They shall submit the proposed decision to the Government, as provided in section 11(b) and shall issue instructions in accordance with its decision.

Chapter Five "A": PRIVATIZATION

Cabinet committee

59A. (a) The Government shall set up a Cabinet Committee on Privatization, its members being the Prime Minister, the Minister of Finance and the Minister of Justice; the Government may coopt one or two additional members to the committee.

(b) The quorum at committee meetings shall be two members, when the committee has three members, and three members when the committee has more than three members.

(c) The Cabinet Committee's decisions shall be adopted by a majority of its members.

Decision on privatization

59B. (a) The Cabinet Committee may decide on the privatization of a Government company, in a said decision the committee shall prescribe the manner of the company's privatization, which shall be one of the following or a combination of them:

(1) sale of the company's shares by prospectus or in some other manner prescribed by the Cabinet Committee;

(2) dilution of the Government's holdings in the company by an issue - by the company - of shares or other capital securities;

(3) an issue - by the State - of securities convertible into share or other capital securities of the company owned by the Government;

(4) the sale of a substantive asset of the company, or of all its assets, including rights;

(5) a change in the rights attached to the shares;

(6) a reorganization, compromise or arrangement said in section 233 of the Companies Ordinance, merger, receivership, winding up or cessation of activity, cessation of winding up or of receivership proceedings, and also the establishment of a Government company, Government subsidiary or mixed company, all in order to implement the privatization;

(7) some other method prescribed by the Ministers.

(b) A draft decision on privatization shall be brought before the Cabinet Committee by the Ministers or by one of them, together with the Authority's opinion; if the Authority finds that a decision on the privatization of a company should be adopted, and if none of the Ministers so proposed to the Government, then the Authority shall submit its opinion in a reasoned memorandum to the Ministers and to the Cabinet Committee, and each of the members of the Cabinet Committee may submit a draft decision on privatization.

(c) A draft decision on privatization shall be brought before the Cabinet Committee after consultation with the Board of Directors of the relevant company; the stand of the Board of Directors shall be brought before the Cabinet Committee, and if the Board of Directors does not adopt a stand within 21 days after it was asked to do so, then the Cabinet Committee may weigh the proposal before it and decide on it.

(d) The Cabinet Committee shall give the following an opportunity to state their case before it -

(1) the Minister responsible for the company's affairs;

(2) the Board of Directors of the company, by the chairman of the Board of Directors or by a person appointed for that purpose by the Board of Directors.

(e) The provisions of section 14 shall not apply to a decision on privatization, and the provisions of section 5 shall not apply to a decision to set up a company under subsection (a)(6).

(f) The Cabinet Committee is empowered to decide, in respect of a company that undergoes privatization, on any question that requires the Government's approval or decision under this Law.

(g) Notification that a decision on the privatization of a company has been adopted shall be published in *Reshumot*; a copy of the decision on privatization shall be sent to the Committee, to the company and to the Companies Registrar; the provisions of this subsection shall not apply, if the Cabinet Committee so decided for reasons of national security, of foreign relations or of international trade relations.

General meetings to carry out structural changes

59C. (a) When a decision on privatization has been adopted and when the Authority prescribed by written notification to the company - after the Minister of Finance was informed - that implementation requires acts or decisions by the general meeting of the company that undergoes privatization, including the amendment of its memorandum and by-laws, then - if the Board of Directors failed to call a general meeting for a day not more than 30 days after the Authority asked it to do so - the Authority shall be authorized to call general meetings of all shareholders or of categories of shareholders for the adoption of aforesaid resolutions, and it may vote at them by virtue of the shares which the Government holds in the company that undergoes privatization; the provisions of section 50 shall not apply to an aforesaid meeting.

(b) If the company that undergoes privatization is wholly Government owned then the Authority may call an aforesaid general meeting with advance notice of at least seven days, notwithstanding the provisions of any enactment or of the company's memorandum and by-laws.

(c) Subject to the provisions of subsections (a) and (b), if privatization of the company requires procedures under the Companies Ordinance or under the company's memorandum and by-laws, including the calling of meetings, the adoption of resolutions by special majorities and approval by a Court, then

the decision on privatization shall not derogate from the need to take those steps.

Preparation and delivery of information an documents

59D. The following obligations shall apply to the company that undergoes privatization and to its ranking employees, to the extent that the Authority so requires of them in writing from time to time.

(1) to deliver to the Authority and to experts on its behalf - or to make available for their inspection - all the information and documents in their possession, or which they are able to obtain or to prepare by reasonable efforts (hereinafter: information), to the extent that the Authority finds them necessary in order to prepare the company for privatization, to implement the decision on privatization, or to assess the value of the company, of its shares or of its assets;

(2) to deliver information to the person likely to purchase the company's shares or assets, who is certified by the Authority for purposes of this paragraph, or to experts on his behalf, to the extent necessary - in the Authority's opinion - for a valuation of the company, of its shares or assets; information shall be delivered under this paragraph subject to secrecy agreements, as the Authority shall instruct after consultation with the company's general manager in order to prevent misuse of the information or breach of the company's commercial secrets;

(3) to prepare every outline or prospectus required for the sale offer for implementation of the decision on privatization; if the company is not wholly owned by the Government, the Government shall bear all expenses incurred by the company for preparation of the said documents, and if the sale offer is combined with a securities issue by the company, then the Government and the company shall bear the expenses in proportional parts.

Instructions

59E. (a) When a decision on privatization has been made and the Authority has decided that - in order to prepare the

company for privatization or in order to implement the decision on privatization - it is necessary that the company perform a certain act, it shall so inform the chairman of the Board of Directors of the company and request him to decide on performance of the act within a reasonable period set by the Authority in its notification.

(b) If the Board of Directors does not, within 14 days from the date of the Authority's notification, decide to perform the act, or if it decided on its performance, but the company does not perform it within the time set by the Authority, then the following provisions shall apply.

(1) if the company that undergoes privatization is wholly Government owned, then the Authority shall be authorized - with approval by the Cabinet Committee - to instruct it to perform the act, and the company must comply with the instruction, whether or not the act is in accordance with the business considerations according to which the company customarily acts, were it not for the privatization (hereinafter, business considerations); if the company does not comply with the instruction within the period set by the Authority, then the Authority may perform the act, by itself or through a person appointed by it for that purpose, and the act of the Authority or of that person shall be deemed, for all intents and purposes, to be an act of the company;

(2) if the company that undergoes privatization is not wholly Government owned, then the Authority shall be authorized - after the company's Board of Directors has been given suitable opportunity to state its position, and with approval by the Cabinet Committee - to instruct the company to perform the act, and the company must comply with the instruction; however, if the instruction does not conform to business considerations, then the provisions of sections 4 and 9 shall apply;

(3) if the company does not comply with the Authority's instruction under paragraph (2), then the Authority may -

(a) apply to the Jerusalem District Court, and the Court may issue an order that permits the Authority to carry out the instruction, by itself or through a person appointed by it for that purpose;

(b) call an extraordinary general meeting of the company, propose and - by virtue of the shares held by the Government in the company - vote for resolutions to instruct the Board of Directors to have the Authority's instructions carried out by the company or by a person appointed by it for that purpose;

(c) The provisions of subsection (b) shall not apply to a company, the securities of which have been offered to the public by prospectus.

(d) For purposes of this section, "act" - any action or omission, including an arrangement and registration of rights, making a contract or refraining from doing so, appointments and dismissals, taking legal steps or refraining therefrom, and compromise.

Responsibility

59F. (a) The company, its officers and employees shall perform any obligation and act under sections 59D and 59E in a manner that will prevent or reduce as much as possible any damage liable to be caused to the company or to a third party in consequence of the performance.

(b) Notwithstanding, the provisions of any enactment, performance of any obligation and act under sections 59D and 59E by an officer or employee of a company that undergoes privatization, or any other act performed by them for the proper implementation of the decision on privatization shall not be grounds for a civil suit against them, provided they acted in good faith and in accordance with the provisions of subsection (a); however, in respect of a claim under Securities Law 5728-1968 the provisions of that Law shall apply.

(c) A company that undergoes privatization shall be entitled to -

(1) compensation from the State for any damage caused

to it directly by performance of an obligation or instruction under sections 59D or 59E, provided the provisions of subsection (a) have been complied with; this provision shall not apply to a wholly Government owned company;

(2) indemnification from the State for any payment for which it became liable to a third party - because of the performance of an obligation or instruction under sections 59D or 59E - under a final judgment or arbitrator's decision, including reasonable legal expenses, provided the provisions of subsection (a) have been complied with and the state has been given proper opportunity to join the proceedings in order to defend itself.

Chapter Nine: APPLICATION OF THIS LAW

Application to bodies other than share companies

60. The provisions of this Law shall also apply, *mutatis mutandis,* to companies without share capital and bodies corporate other than companies, except statutory bodies, if the State controls or participates in them to the extent specified in section 1(a) in respect of a Government company.

Appointments in other bodies corporate and bodies set up by law

60A. (a) Notwithstanding the provisions of section 60, the provisions of sections 16A, 17, 17A, 18A to 18C; 24(c) and (d), and 37(c) and (d) shall apply to appointments to positions in bodies corporate set up by law and in other bodies set up by enactment, *mutatis mutandis* as the case may be and as specified hereinafter, all if the appointment is by a Minister or by the Government, or on the recommendation or with the approval of any of them, subject to the provisions of the Law or enactment by virtue of which the body corporate or body is set up; if the Law provides that representatives of bodies or organizations enumerated in that Law be appointed to the aforesaid bodies corporate or bodies, then the provisions of this Law shall not apply to those representatives.

(b) The changes are as follows:

(1) wherever the terms "Director", "chairman of the Board of Directors" or "general manager" appear, they shall be read as "member of the council, member of the authority or member of the body who holds a position similar - even if designated differently - to that of chairman or general manager of those bodies, as the case may be";

(2) in section 18B(a), instead of "Minister of Finance", read "Minister of Justice";

(3) in section 18B(b), paragraphs (2) and (3), instead of "public personality" and "representative of the Authority", read "two representatives of the public, chosen by the chairman of the Committee from a list - composed for this purpose by the Ministers of Finance and of Justice after consultation with the Council for Public Bodies Corporate - of public personalities who meet the qualifications set in this Law for a chairman of a Board of Directors, and who have no personal, business or political link with any Cabinet member;

(4) in section 18B(d)(3), instead of "the Committee shall communicate its opinion on the candidate to the Ministers in writing", read, as the case may be, "the Committee shall communicate its opinion to whoever recommended the candidates, approves them or appoints them";

(5) for purposes of this section, "other bodies set up by enactment" - bodies enumerated in the Schedule to this Law, which are bodies of persons whom the enactment designates as a council, authority council, administration, management committee or other body with similar tasks, even if it bears a different name, all if its members include representatives of the public, the Minister of Justice may add other bodies set up by enactment to the list of bodies enumerated in the Schedule and - with approval by the Knesset Constitution, Law and Justice Committee - he may strike out a body that appears in the Schedule.

Application to certain bodies.

61. (a) For the purposes of this Law, there shall also be regarded as a Government company -

(1) the National Water Authority, within the meaning of section 46 of the Water Law, 5719-1959):

(2) a company in which half the voting power at general meetings or the right to appoint half the number of directors is held by the State and at least one quarter of the voting power or the right to appoint at least one quarter of the number of directors is held by a local authority or a company controlled by it.

(b) For the purposes of the establishment of a company referred to in subsection (a)(2), the proposal referred to in section 5(a) shall be submitted after consultation with the Minister of the Interior.

Inapplicability to agricultural councils.

62. This Law shall not apply to a company acting as a council for agriculture production or marketing.

Inapplicability in special cases.

63. The provisions of this Law shall not apply, wholly or in part -

(1) to a company in respect of which the Government, with the approval of the Committee, has decided that reasons of State security, foreign relations or international trade relations so require;

(2) to a foreign company engaged in a kind of activity in respect of which the Government, with the approval of the Committee, has decided that reasons as aforesaid require that the said provisions shall not apply to a company engaged therein.

Provisions nor applicable when capital is to be raised

63A. The empowering provision in section 4(a) or the provisions of section 33(c) shall not apply to a company, in respect of which the Government decided - with approval by the Committee - that for reasons of a public share offering it

is necessary that they not apply to it; in this section, "shares" - certificates issued by the company in series, which entitle to membership or participation in it, or which entitle to acquire aforesaid shares.

Chapter Ten: MISCELLANEOUS PROVISIONS

Saving of powers of State Comptroller

64. Nothing in this Law shall derogate from the State Comptroller's functions or powers under the State Comptroller Law (Consolidated Version) 5718-1958 or under any other Law.

Saving of State Property Law

65. This Law shall not derogate from the provisions of the State Property Law 5711-1951.

Powers cannot be delegated

66. The powers of the Ministers under this Law cannot be delegated.

Notification of suspicion of offense

67. If the Ministers receive information under this Law, which raises suspicion that a criminal offense has been committed, they shall inform the Attorney General accordingly.

Penalties

68. (a) If a Director on behalf of the State knowingly violates the provisions of section 20, if a general manager of a Government company or of a Government subsidiary knowingly violates the provisions of section 41, and if a representative of the State fails to comply with instructions given him under sections 50(c), 58(a)(5) or 59(b), he shall be liable to one year imprisonment or a fine of IL20,000.

(b) For purposes of subsection (a), it is immaterial whether the offense was committed in Israel or abroad, and courts in Israel shall be competent to try a person even if the offense was committed abroad.

(c) If a person knowingly contravened a request by the Authority in accordance with section 55, he shall be liable to one year imprisonment.

Amendment of Penal Law Amendment (Public Servants) Law

69. In the Penal Law Amendment (Public Servants) Law 5717-1957, add the following after section 1(10):

"(11)a Director on behalf of the State of a Government company, of a Government subsidiary or of a mixed company, as defined in the Government Companies Law 5735-1975, and a person employed by or engaged in the service of an aforesaid company,"

Transitional provisions

70. (a) A person who, before this Law came into effect, was appointed Director on behalf of the State in a Government company, a Government subsidiary company, a mixed company or a foreign company shall cease to hold office not later than eighteen months after the coming into force of this Law unless he is reappointed under the provisions of this Law.

(b) A member of the Knesset who immediately before the coming into force of this Law holds one of the offices which this Law debars a Member of the Knesset from holding may continue holding it as long as he is a Member of the Eighth Knesset.

(c) This Law shall not affect any contract entered into by a Government company before its coming into force.

Implementation and regulation.

71. The Minister of Finance is charged with the implementation of this Law and may make regulations as to any matter relating to its implementation.

Commencement

72. This Law shall come into force upon the expiration of six months from its adoption by the Knesset.

SCHEDULE

(Section 60A)

1 Moving Pictures Censorship Board - Cinematographic Films Ordinance, 1927
2. Cable Broadcasts Council - Telecommunications Law 5742-1982
3. Museums Council - Museums Law 5743-1983
4. Investments in Agriculture Administration Council - Encouragement of Capital Investments in Agriculture Law 5741-1980
5. Advisory Council - Petroleum Law 5712-1952
6. Advisory Council - Encouragement of Capital Investments Law 5719-1959

REFERENCES

References to the Law here translated and to legal measures mentioned in it are listed below. Where possible, we refer to English language versions, both *Laws of the State of Israel* (LSI), published by the Minister of Justice, and the consolidated law translations produced by A.G. Publications. The following abbreviations are used:

A.G.	A.G. Publications
L.P.	Laws of Palestine, 1934
LSI	Laws of the State of Israel
LSI (NV)	Laws of the State of Israel, New Version
NV	Sefer Ha-Chukkim, New Version
S.H.	Sefer Ha-Chukkim, the official Hebrew language gazette of legislation passed by the Knesset

AFFIDAVIT OF DOV WEISSGLAS

TEL AVIV §
§
ISRAEL §

Dov Weissglas, after first being duly sworn upon his oath, makes this affidavit and states the following.

1. My name is Dov Weissglas. I am over the age of twenty one (21) years, am competent to testify to the matters stated herein, have personal knowledge of the facts and statements in this affidavit, and each of the facts and statements is, to the best of my knowledge and belief, true and correct.

2. I am a graduate of the Faculty of Law of the Hebrew University of Jerusalem (Tel Aviv adjunct in 1970) and I have practised law in Israel since 1971.

I am a senior partner in Moritz, Weissglas & Almagor, Law Office (which was established in 1965) and my fields of specialisation are commercial law, company law, torts and insurance.

3. Dead Sea Bromine Co. Ltd (hereinafter referred to as "Bromine") is a "government company" within the meaning of such expression in the Government Companies Law, 5735-1975 (hereinafter referred to as "the Law").

The definition of a company as a government company is determined in accordance with the direct or indirect holding percentage of the shares therein by the State of Israel. Bromine is controlled by a government company and accordingly is itself a government company. However, to the best of my understanding, Bromine is not in any way an arm or an organ of the State, nor is it a government department or authority. Bromine is a commercial company for all intents and purposes. I base my opinion on the following points:

(a) By statute, a "government company" is required to act just as any commercial company on an ordinary business basis. Section 4 of the Law provides as follows:

"4. (1) A government company shall act in accordance with the business considerations by which a non-government company is normally guided, unless the Government, with the approval of the Committee, prescribes other considerations for acting . . ."

One could not err in interpreting the expression "government company" and infer therefrom that a government company is subject to directions or considerations of the Government in its management and operations, unless the statutory exception described in clause (b) below applies.

A government company is not an organ of the State, it is a separate and distinguished legal entity. Pursuant to Israeli law, it is managed in accordance with commercial considerations, it does not enjoy the immunities which the State enjoys and it is not subject to the duties and restrictions that apply to the Government.

(b) In the wording of section 4(a) of the Law, there is an exception which confers upon the Government the power to make a decision whereby a government company shall act in accordance with 'other' considerations, i.e. considerations which are not ordinary commercial considerations.

Section 63A of the Law prescribes that the empowering provision at the end of section 4(a) of the Law shall not apply if the Government has made a decision thereon for reasons of offering shares to the public. The guiding concept that lies at the basis of this section is that when a government company's shares are offered to the public and such shares are listed on a stock exchange, the Company must act in accordance with pure business considerations. An investor from amongst the public purchasing shares in a government company, just as in any other company, for the purposes of obtaining a profit, is

interested in the Company operating according to business considerations and should not be howsoever guided by other considerations of the Government. Accordingly, the legislature understood that when it is wished to offer shares to the public, the empowering provision in section 4(a) must be repealed and it must be guaranteed to all that the Company will continue to operate, just as every commercial company, in accordance with ordinary commercial considerations. It is not a tool in the hands of the Government to attain goals. It is a business company, just as every ordinary commercial company, private or public.

On 19th February 1992, the State of Israel and Israel Chemicals Ltd made an offer of Israel Chemicals Ltd's shares to the public. The Government decided, on 1st September 1991, pursuant to section 63A of the Law, that the empowering provision in section 4(a) would not apply to Israel Chemical Ltd or members of its group, of which Bromine is one. Thus, pursuant to this decision, the Government is not entitled to dictate to Bromine other considerations for acting, and the Company is obliged to act in accordance with business considerations, just as any other commercial company.

The State of Israel holds a special share by virtue whereof it is entitled to object to exceptional operations in the Company which may jeopardise the State's vital interests. To the best of my understanding, the special State share is intended to provide the State with the possibility of preventing hostile entities taking control of the companies and to ensure that the companies shall remain Israeli companies. Thus, the special share has not implications on the routine management of all the companies in the concern.

(c) According to customary law in Israel, and as I was explained also in the United States, directors of a company are obliged to act in good faith for the benefit of the Company. The Barak Commission, which was appointed in 1969 by the

Minister of Justice and the Minister of Finance in order to prepare the Draft Law and which was headed by Prof. A. Barak (who is today the Deputy Chief Justice of the Supreme Court of the State of Israel), stated the following on this matter in its report (page 29):

> "The director of a government company must act according to what appears to him in good faith as being for the benefit of the government company . . . The director's duty of trust is to the government company and to it alone. He is not a representative of the shareholders and he is not subordinate to the appointing ministers. He is an organ of the Company and he owes it and only it a duty of trust."

A true and correct copy [of page 29 of the report] is annexed hereto as Exhibit A.

If the directors of a government company, such as Bromine, should pass resolutions the object whereof is to serve any interest of the Government, which is not in the business interest of Bromine, they would thereby be breaching the duties of trust which they bear and they may be sued in such regard by shareholders from amongst the public by way of a derivative action.

Moreover, and in addition to a director of a government company being under a duty to act in good faith for the welfare of the Company and for a proper object only, he must also exercise free discretion in a government company such as Bromine, to which the last part of section 4(a) of the Law does not apply, may not accept instructions from the Government as to the manner in which he votes.

(d) Bromine, just as every government company, is a legal entity which is separate and distinct from the State. The existence of the separate legal entity finds expression in a variety of fields, inter alia: the Company's employees are not employees of the State, government companies are entitled to

file and have actually filed various legal actions against the State of Israel. For example, a hearing is presently pending before the Supreme Court sitting as a High Court of Justice (HCJ 1255/94) on a petition filed by Bezeq - The Israel Communication Corporation Ltd (a government company) against the State of Israel - the Minister of Communications. The Israel Electric Corp. Ltd (which is also a government company) has filed a petition with the Supreme Court, in HCJ 3014/93, against the State of Israel - the Minister of Finance.

(e) The State of Israel had adopted an overall policy of privatizing government companies. The privatization of the companies in the Israel Chemicals concern (including Bromine) has been given paramount priority and by virtue thereof 25% of Israel Chemicals' shares have been offered to the public on the Tel Aviv Stock Exchange. This is a first step in a line of action which will in future result in a greater reduction in the State's shareholdings in companies of the concern.

In summary, to the best of my knowledge and understanding, Bromine is not an organ of the State and it is not subordinate to its directions. The Company is a separate legal entity which can sue or be sued by the State. The Company is obliged to act in accordance with ordinary commercial considerations. The Government is not entitled to give the Company directions to act according to considerations that are not commercial. The Company's directors may not conduct its affairs in accordance with the Government's considerations, but only from the point of view of the Company's welfare. The Company is not an instrument or tool to be used by the State to attain any object whatsoever, it is not an agency or an instrument of the State and is not subordinate thereto.

FURTHER, AFFIANT SAITH NOT.

/s/

DOV WEISSGLAS

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, by DOV WEISSGLAS, on this . . . day of May, 1994 to certify which witness my hand and seal of office.

Notary Public in and for the State of *

(Printed Name of Notary)

My Commission Expires:

UNITED STATES DISTRICT COURT
EASTERN DIVISION OF LOUISIANA

LUCAS PASTOR CANALES MARTINEZ, et al.,	)	No. 95-3212
Plaintiffs, vs. DOW CHEMICAL CO., et al.,	)	
Defendants.	)	
LUCAS PASTOR CANALES MARTINEZ, et al.,	)	No. 95-3214
Plaintiffs, vs. DOW CHEMICAL CO., et al.,	)	
Defendants.	)	

DEPOSITION OF
NOAH EHRLICH

DATE: Friday, February 23, 1966
TIME: 9:50 a.m.
PLACE: CLEARY GOTTLIEB, STEEN & HAMILTON
55 Basinghall Street
London, England
REPORTER: VICKI CARD, C.S.R.
License No. 5211

VICKI CARD
CERTIFIED SHORTHAND REPORTING

Page 11

Q. Would you state your name for the record, please.
A. Noah Ehrlich.

Page 15

to your beginning work for them. Do you know when the company was first founded?
A. Dead Sea Bromine was founded in 1955.
Q. And when you say "Dead Sea Bromine," the full name is Dead Sea Bromine Company?
A. Company Limited.
Q. 1955, did you say?
A. Yes.

Page 16

Q. And how about Bromine Compounds Limited?
A. Bromine Compounds Limited was founded in 1962.
Q. Now, is it true that these companies are part of a larger family of companies? They have parents?
A. Yes.

Page 17

BY DAVID SIEGEL: Q. As of today, can you list every company that is related to dead Sea Bromine Company
Limited?
A. Dead Sea Bromine Company Limited as of today?
Q. Um-hmm.

Page 18

A. I believe so.
Q. What are they.
A. Okay. We'll start with Dead Sea Bromine Company Limited. We'll have Bromine Compounds Limited. We'll have
Bromine and Chemical in the UK; Eurobrom BV in Holland;

Ameribrom, Inc., in the U.S.; Bromochem Far East in Japan.
We'll have Landkem.
Q. What's the last one?
A. Landkem in South Africa.
Q. How do you spell that?
A. L-a-n-d-k-e-m. Landkem in South Africa. Those are companies that I believe are directly held by Dead Sea Bromine. Now we have subsidiaries of some of the companies. You want the —
Q. Yes, please.
A. Okay. Ameribrom has subsidiary by the name of High Yield Bromine, Inc. Eurobrom has a company by the name of Broomchemie BV.
Q. Could you spell that, please.
A. Yeah. It's B-r-o-o-m-c-h-e-m-i-e-, Broomchemie BV. Also, we have a subsidiary by the name of Bromisan, which is B-r-o-m-i-s-a-n, Brazil.

Page 19

Q. Okay. Now, if we went through the same exercise with Bromine Compounds Limited, is there a group of companies that's related to Bromine Compounds Limited?
A. No.
Q. How about Dead Sea Works Limited?
A. I cannot tell you.
Q. Okay. Israel Chemicals?
A. Israel Chemicals I can't tell you, either.
Q. To the — why can't you tell me with respect to Israel Chemicals?
A. Because there are such a large number of companies, I'm not sure I can.

Page 21

Q. Okay. Let's go through your work history at

Bromine—Dead Sea Bromine and Bromine Compounds Limited.
You first began working in April of 1976?
A. This is correct.
Q. What did you do when you first began working?
A. My first position was assistant to the general manager.
Q. And which company was it for?
A. It was—he was the general manager of Dead Sea Bromine and of Bromine Compounds Limited.
Q. What did you do in your capacity as assistant to the general manager?
A. I prepared economic evaluations, position papers

Page 22

and any other tasks that he asked me to do.
Q. What would be an example of a position paper, to the best of your recollection? What kinds of things would you write position papers about?
A. We will evaluate a new business, a new product line.
Q. So the general manager would come to you and say, "we're considering a new product line. I want you to write me a report about it"?
A. Correct.
Q. Can you recall a specific product that you did that for?
A. Yes, I can.
Q. What was that?
A. Sodium bromate, for example.
Q. And this is sometime in the time frame of 1976?
A. I would say around '77, '78.
Q. What was sodium bromide?
A. It was sodium bromate.
Q. Bromate? Can you explain what that is?
A. It's a chemical used in the textile and in the cosmetic field. At that time we were producing relatively

small quantities. We can develop a new technology that would give us a marketing and economic advantage, and we wanted to see how best we can capture a larger part of the market.

Page 23

Q. Where was the market for sodium bromate at that time?
A. It was worldwide.

* * *

BY DAVID SIEGEL: Q. Now, where did the idea, for example, for sodium bromate originate in terms of it being a business of Dead Sea Bromine's? How did the company, to your knowledge, originally get into the business of making sodium bromate?

Page 24

A. As I mentioned before, we did produce sodium bromate before. But one of our engineers had an idea how to produce it in a way that will save about 30 percent of the production cost. And once he proved that it can be done, then we started with our program.
Q. Can you think of another position paper that you wrote in '76, '77, shortly after beginning in your role as assistant to the general manager?
MR. BRANDT: Let me go ahead—I'm going—I'm not going to cut you off at this point, but I'm going to say I think we're getting pretty far afield. You've asked about his duty. He's given you an example. I'm happy for him to give you another example if he can think of one. We're bordering, I think, on total irrelevancy at this point.

BY DAVID SIEGEL: Q. Can you think of another one?
A. I cannot think of another one.
Q. What else did you do as an assistant to the general manager of Dead Sea Bromine and Bromine Compounds Limited besides write these position papers?
MR. BRANDT: Object to the form of the question as asked and answered already by the witness.
BY DAVID SIEGEL: Q. You've mentioned economic evaluations and drafting position papers. Is there anything else you can think of?
A. I prepared management reports for him.

Page 25

Q. What would a management report consist of?
A. Such as sales report, cost report, costing -- costing reports, et cetera.
Q. Now, specifically with reference to sodium bromate, when you wrote a position paper analyzing the possibility for expanding sales of that product, did you have any consultation with any government representative in your preparation of that report?
A. I had consultation with a representative from ICL, Israel Chemical Limited.

* * *

Q. Did you have any consultation with any government representative in drafting your position report, your position paper with respect to sodium bromate?
A. No.

Page 30

Q. Now, in your performance of your duties as coordinating sales in the North and South America territories, did you have an occasion to consult with government representatives?

MR. BRANDT: I'm sorry.
BY DAVID SIEGEL: Q. The State of Israel.
A. I — no.
Q. So you were able to perform these functions, including receiving orders, coordinating the production function, the shipping function, verifying credit, collecting the accounts on your own, without any assistance or involvement from the Israeli government?
A. Correct.
Q. Did the Israeli government have any input into the decision concerning which products to sell in those territories, the North and South American territories that you're discussing?
A. I'm not aware of it.
Q. Did the government have any input in defining the geographical scope of those territories? For example, did the government ever say, "we don't want you to sell products to that particular country"?
A. Are you talking about North and South America?
Q. Yes.

Page 31

A. I'm not aware of it.
Q. How would the company determine which countries to try to sell products in?
A. I would say that the criteria was the existing market for the product, the present and future economics of our involvement, and the availability of the product.

Page 32

BY DAVID SIEGEL: Q. All right. What did you do after you were working in this capacity as export/import coordinator?
A. I was assigned to join Ameribrom, Inc., our U.S. subsidiary.

Q. And this was 1980?
A. Yes.

Page 33

Q. Did you move to the United States?
A. Yes.
Q. Where did you work for Ameribrom?
A. Out of the New York office.
Q. And you were there until August of '85?
A. Until July of '85.
Q. What did your duties consist of when you worked for Ameribrom?
A. I was office manager and VP of the administration and finance.
Q. What did office manager duties consist of?
A. I was responsible for the daily operation of the office and to make sure that the people came to work and have all the means that's required to work. I was responsible for managing the orders, customer service, inventories, accounting, shipping.
Q. Now, at that time during your tenure with Ameribrom, what was—you may have already answered this question—what was its relationship to Dead Sea Bromine?
A. Ameribrom was a fully-owned subsidiary of Dead Sea Bromine.
Q. Was it a government company, as you understand that term?
A. What is the term of "government company"?
Q. You tell me.
MR. BRANDT: Well, no. You asked. If you have a

Page 34

definition you're using, tell him. You've asked him. He's told you he'd like a definition from you.
BY DAVID SIEGEL: Q. Are you familiar with the Government Companies Law in Israel?

A. Yes.
Q. And you understand that the Government Companies Law makes reference to government companies?
A. Yes.
Q. What's your understanding of what a government company is?
MR. BRANDT: I'm going to object to the form of the question as calling for a legal conclusion of this witness. He is not qualified as a lawyer.
If you understand, if you have an understanding, a layman's understanding, of what that term is, you're free to give it.
THE WITNESS: I'll give an answer.
It's a company that the government owns directly or indirectly more than 50 percent. It has the rights to nominate the majority of—of the directors. And some key functions that would be approved by the proper minister before taking office.

Page 35

Q. Okay. What did you do next after you left Ameribrom in July of 1985?
A. My next position was head of the finance department—sorry—the finance division of Dead Sea Bromine Group.
Q. You moved back to Israel?
A. Yes.
Q. How long did you occupy that position?
A. Till December 31st, 1991.
Q. What did you do as head of the finance division for the Dead Sea Bromine Group?
A. I was responsible for preparing the budgets for

Page 36

the group. I was responsible for the financial sheets,

including loans, et cetera. Insurance was under my responsibility, as well. I was in charge of making sure that our monetary assets are being watched and kept well. And I provided management with a—with management information, cost accounting, profit and loss, financial statement, that sort of thing.

Q. Now, in connection with discharging those duties as you've just described them, did you have occasion to interact with government representatives of the state of Israel?

A. Yes.

Q. Who would they be? I'm not—I don't mean their names, necessarily, but their titles or the parties of the government that they were from.

A. I had to deal with people from the Ministry of Industry and Trade, and from the Central Bank of Israel and from the Ministry of Finance.

(Discussion off the record between the witness and Mr. Brandt.)

And part of the Ministry of Finance of the government authorities.

What's the official name? Government Authority Company.

MR. BRANDT: Government Companies Authority.

THE WITNESS: Government Companies Authority.

Page 37

BY DAVID SIEGEL: Q. Now, with respect to the Ministry of Industry and Trade, what types of interaction would you have with that ministry in serving as head of the finance division?

A. Mostly involving investment, to make sure that they understand what we are doing, to get their approvals, to get grants if we fell in place. The chief Israeli scientist is also part of this ministry, and we had dealing with him to get grants for research and development.

Page 39

A. I will clarify. The chief scientist is involved in grants for R and D. In every year the budget process we prepare our R and D budget for the full year, representing specific project to chief scientist. They review it and, according to their revisions, it will determine the percentage of grant that they're going to provide.

Page 40

Q. Okay. Can you recall an instance of making a grant proposal requesting funds to do research and development and it being rejected?
A. Yes.
Q. What would that have been?
A. I don't know exactly the product, but sometimes they felt there was no innovation in the R and D, so it doesn't give anything new; or they felt that in the past they supported similar technology and, therefore, they will not.
Q. Okay. With respect to the category of investments, you began talking about increasing the production capacity at a certain location. Where was that?
A. I mentioned Sdom.
Q. Sdom, okay. So you—the company somehow determined that it wanted to increase production capacity, and that was going to require a certain amount of investment. And you had to go get approval to spend that money? Is that what you're saying?
A. No. The process was we prepared a business plan which has to be reviewed internally first. Once it was reviewed and approved, we would go to the ministry to get its approval, which include the allocation of grants.

Page 41

Q. And that's also the Ministry of Industry and Trade?

A. Yes.
Q. Now, the first step was an internal review. What would that consist of?
A. We will prepare a—the business plan would be prepared internally. And the technical, economic, research people will discuss it within the company. We will bring it to the board of directors for approval. And once it was approved by the board, we will proceed.
Q. Was the approval of the Ministry of Industry and Trade a requirement before Dead Sea Bromine could go forward with its plans for increasing the production capacity?
A. It wasn't a requirement. But the grants in Israel now about 38 percent. So this was a major consideration in the financing of the program.
Q. So this element of presenting the plan to the Ministry of Industry and Trade related to financing; it didn't necessarily relate to the ability to go forward if you were able to find other sources of financing for example; is that correct?
MR. BRANDT: We're talking about this one —
BY DAVID SIEGEL: Q. The Sdom plant.
A. You are correct. But, again, in our business plan and evaluations, the grant had a major importance.
Q. Okay. What—do you recall what happened in that

Page 42

specific instance?
A. The ministry asked some questions. They wanted to make sure how we are going to get the rest of the finance, where the equipments and machinery are going to come from.
They did—they conducted independent study to verify the finding. They made some minor changes. And they approved

it.
Q. Do you recall approximately what percentage of the funding for that project was represented by the government grant?
A. I mentioned about 38 percent. But I would say it was between 30 and 40 percent.
Q. And where did the rest of the funding come from?
A. The rest of the funding came from loans and internal sources.
Q. Now, how did the — how did the grant work? Was it simply a block grant of a certain amount of cash? Or was it a loan?
A. Actually, we get a permit. We apply to a bank. And we have to report on a regular basis to the bank about the progress to prove that the money was spent. And then we get refund for the — for the grants.
Q. But with respect to the 60 or 70 percent of the funding that did not emanate from this grant, did the government have any role whatsoever?
A. We had to get a permit from the Central Bank of

Page 43

Israel to borrow money out of Israel. This was part of the foreign currency regulation. But with the approval of the government, the Central Bank approval was much easier to obtain.
Q. Okay. The government didn't guarantee the remainder of those loans, did it?
A. No.

Page 48

BY DAVID SIEGEL: Q. Before we took a break, we were talking about this project of increasing the production capacity at the Sdom facility. During your tenure as head of the finance division, were there any other projects

similar to the one at Sdom that you can recall being involved in?
A. We had similar production capacity crews at our Ramat Hovav plant.
Q. Just so we can get an idea of the magnitude of these projects, how many—well, I was going to say how

Page 49

many dollars were involved. Would you have measured it in
U.S. dollars? Or what currency would you have measured it
in terms of the amounts of the loans and the grants?
A. It's all measured in dollars.
Q. Okay. With respect to the Sdom facility, how large a project was that in terms of total dollars, either borrowed or gotten through grants?
A. I would say that the project will vary between ten to 40 million dollars.
Q. And the project concerning the Ramat Hovav facility, was that of a similar magnitude?
A. Similar magnitude, yes.
Q. Okay. Now, did the Ramat Hovav project go through the same procedure in terms of generating a business plan and then presenting it to the Ministry of Industry and Trade for approval?
A. Same process, yes.
Q. Okay. Was a grant secured in that instance?
A. Yes.
Q. And what—in terms of a percentage, how much of the project was --
A. About the same.
Q. Thirty to 40 percent?
A. Yes.
Q. And where did the rest of the funding come from for that project?

Page 50

A. It's from internal generation of funds or loans.

* * *

BY DAVID SIEGEL: Q. Okay. Now, this whole line of questioning started with me asking you what sorts of government officials you would have occasion to interact with in your capacity as head of the finance division. And you mentioned the Ministry of Industry and Trade, the Central Bank of Israel and the Ministry of Finance. I think with respect to both the Sdom plant and the Ramat Hovav plant, we've talked about how you would present your business plan to the Minister of Industry and Trade. How, if at all, would the Central Bank or the Ministry of Finance be involved in these projects, or were they involved in these projects?

Page 51

A. I mentioned before that, in order to get loans in foreign currency, we require a permit from the Central Bank. But the involvement with the finance ministry is not necessarily related to those.

Q. Okay. What sort of involvement with the Ministry of Finance did you have during your tenure as head of the finance division?

A. For example, as a government-owned company, we are requested to bring the profits from the subsidiary operation. And we—in order to develop, further develop, our business, we're trying to return the profits outside. So we had to go to the Ministry of Finance to explain why we are requesting to keep the profits out, how we are going to make sure that in the future the government or the country will not suffer, et cetera. And this was almost on a continuous basis, meetings that related to that.

Q. What was the concern of the Ministry of Finance?

I'm sorry. I just didn't follow your answer. They were concerned about profits being kept out of the country?
MR. BRANDT: Why don't you read back his answer.
(Record read.)
BY DAVID SIEGEL: Q. Okay. Now, if you can help me clarify that, what did you mean when you said "return the profits outside"?
A. Companies that is selling and/or producing usually makes profits. The idea was that the profit of our

Page 52

subsidiaries will be paid back to Israel as dividends. Okay. And we wanted to return the profits in order to further develop the business. This is exactly what I mean.
Q. And when you say paid to Israel as a dividend, do you mean by virtue of their ownership of shares?
A. Yes.
Q. And so that would be true of any other entity that owned shares, as well? They were just — did they have some special claim to the payment of dividends because they were the government of Israel?
A. The government request that the profits will be brought back to Israel as dividend.
Q. And you wanted to retain them for further expansion of the business?
A. Correct.
Q. And this was, as you described it, an ongoing or a continuous issue?
A. Yes.
Q. How would it be resolved?
A. What? I — I don't understand the question.
Q. Well, what would — the government would say, "we want you to bring X number of dollars back into the country," and you would say, "No. We want to keep them

to
make the business stronger." How would that dispute be resolved?
A. We explain and, most cases, convince them it's

Page 53

better to retain the profits outside so we can increase our commercial involvement without the necessity of borrowing
money, et cetera. And to the best of my recollection, for a long period of time they agreed to keep the profits abroad.

Page 54

Q. Would you have any interaction with any government ministry in assessing the requisite amounts of insurance?
A. There was a period of time where we could not get coverage. This was during the Gulf War. And the government
at that time, through a subsidiary of it, provided some insurance.
Q. Okay. In ordinary times, outside of the time period of the Gulf War, did the government have any involvement in — in directing the company in terms of how
much insurance it should have?
A. No.
Q. Were you solely responsible for making that decision, or did you have a staff of people that helped you evaluate the company's needs with respect to insurance?
A. Actually, this was a responsibility of the board of directors to determine how much coverage we should have.
And my job was to obtain this coverage.
Q. Now, what were your duties with respect to preparing the budget of the Bromine—Dead Sea Bromine Group during that time frame from '85 to '91?
A. I was responsible for preparing the work plan and

26 the budget for the group. It's a process that takes about

Page 55

1 two to three months. We get instructions, guidelines from
2 ICL, from the—how do you call it authority?
—Government
3 Authority Companies. They give us some—some
guidelines
4 about labor cost, about similar items. We get from Israel
5 Chemical Limited—and I guess they get it somehow from
the
6 Minister of Finance—some evaluation about the economic
7 situation next year in Israel, inflation, exchange rate, et
8 cetera. Based on this on the one hand the marketing,
9 sales and production ability on the other hand, we prepare
a
10 document. And it is being reviewed internally, presented
to
11 a board subcommittee, which goes through it, then to the
12 board. And once the board is—it gets the board approval,
13 it's a --
14 Q. It's the budget?
15 A. It's the budget.
16 Q. Okay. Now, you mentioned getting some guidelines
17 from the Government Companies Authority concerning
labor
18 costs. Could you elaborate on that?
19 MR. BRANDT: I object to the form of the question
20 as being overly broad and ambiguous.
21 If you understand the question, you're free to
22 respond.
23 BY DAVID SIEGEL: Q. What did you mean when
you
24 said guidelines concerning labor costs?
25 A. The—the Government Companies Authority will
26 determine any labor—any wage increase. They will give
us

Page 56

next year it should be about that and that percent by sectors; bonuses will be minimum, maximum, and how to distribute, et cetera.
Q. Okay. Now, specifically with respect to wage increase, you're saying that the percentage of any annual wage increase would be dictated by the government, or was it simply a guideline in the sense of being a suggestion?
A. I would say that—let me put it this way. There are, actually, two levels of wage negotiation. There is a wage negotiation by a sector. And this is decided by the government. And there is a specific wage discussion by the company, which was decided by—mostly by Israel Chemical Limited. So we got from both the Government Authority Company and Israel Chemical Limited instruction about how much, to whom and how to do it.
Q. Okay. I think I understand that those are the two sources that you would be getting information from. But my question is: Were they—were they binding in any sense? Did the government have the power to tell you that, for the following types of employees, you may only increase their wages by this percentage, and you may not increase it by any amount greater than that?
A. Yes.
Q. And you had no authority to go to the government with a request for a deviation from those guidelines?
A. To the best of my knowledge, we did not do it.

Page 57

BY DAVID SIEGEL: Q. Well, if I understood your

testimony, you're saying that the government would tell you
that, for the next year, you're permitted to have a wage increase of two percent or three percent. That simply gives you the percentage of how much the amount can go up if you
choose to raise it that amount. Who set—who determined the base salary?
A. This was done by the human resources management.
Q. Of the company?
A. Of the company.

Page 58

Q. Okay. Other than guidelines about labor costs, what other sort of involvement in creating the budget would
the government have?
A. First of all, the representatives are part of the committee. They take active role in—I won't say in preparing, but in auditing and reviewing the budget.
Q. Okay. I'm not clear what you're talking about. You said "the representatives."
A. Usually, the government would have between two to three directors that are nominated by the different ministries.
Q. Okay. So the—
A. And—and there is a representative of the Government Authorities Companies, as well.

Page 61

BY DAVID SIEGEL: Q. After the budget was prepared, how did it become finalized as the budget for the company for any particular year?
A. We have a special board meeting that the main issue is approval of the budget. And it's become documented. All financial—internal financial reports we are producing compare the actual results to the budget. So

this is how we report on it during the year. We compare what we do to the budget.
Q. And then the board votes on the budget and either adopts it or doesn't adopt it, and then it's changed until it's acceptable?
A. Yes.
Q. Okay. When—when the board finally approves a budget, is it then presented to the government for any kind of review or approval?
A. I don't know.
Q. Well, you don't know because you don't remember or —you were head of the finance division for—
A. 1 —
Q. —six years. Do you recall ever having to present a budget to the government for approval?
A. I presented—no. To the budget (sic) for approval? No. I represent to ICL, Israel Chemical

Page 62

Limited. And I don't know what they did with it.
Q. Now, with respect to the number of directors who were from the government—
A. Well, government employees.
Q. Government employees. Is it true that they never represented a majority of the total number of directors on the board at any time?
A. I would say that, in most cases, they did not represent a majority.
Q. Can you ever remember a specific case where the majority of the board of directors were government employees?
A. I remember that we had a period of time where we didn't have sufficient numbers, and the company operates under different procedure.
Q. When was that?
A. I cannot give you specific dates, but we—there was times that we didn't have a quorum because—

19 Q. Didn't have a quorum.

* * *

24 THE WITNESS: Because the government did not
25 approve certain directors, not necessarily government
26 employee directors. And we operated under the general

Page 63

1 assembly procedure.
2 BY DAVID SIEGEL: Q. Okay. Let's talk about a
3 little bit more this procedure of how the board is
4 constituted. You just made a reference to the government
5 not approving certain directors. Are you testifying that
6 every person who served as a director on the board had to
go
7 through a government approval process?
8 A. Yes.

* * *

18 BY DAVID SIEGEL: Q. How were board members
or
19 potential board members selected or identified for
20 presentation to the government for approval?
21 A. I—I don't know. I can tell you that some of
22 them were ICL employees, some of them were government
23 employees. But how and who selects, I have no idea. I
can
24 tell you that it requires the signature of two ministers for
25 each director nomination.
26 MR. BREM: I'm sorry. I didn't hear the last.

Page 64

1 thing he said.
2 MR. BRANDT: Requires two signatures.
3 THE WITNESS: Two ministers. The Minister of
4 Finance and the Minister of Industry and Trade must
approve
5 the nomination.

* * *

22 BY DAVID SIEGEL: Q. Okay. This procedure that
23 you talked about of going to the government with a grant
24 proposal, do you know if the Israel government gave grants
25 to companies who were not government companies during
that
26 time frame?

Page 65

1 A. Yes.

* * *

10 Q. Okay. After December of 1991, what was your next
11 duty with the Bromine Group of Companies?
12 A. Okay. I came back January 1st of 1993. And I—
13 my position was marketing manager of the inorganics
14 products.

* * *

26 BY DAVID SIEGEL: Q. Okay. When you began

Page 66

1 working again in 1993, January, as marketing manager of
2 inorganic products, where were you based?
3 A. Beer Sheva.
4 Q. And what did your duties in that job consist of?
5 A. To prepare and execute a marketing program with
6 the product group and to promote usage of our products
and
7 to increase the basket of products that we were producing.
8 Q. How long did you have that job?
9 A. For two years.

Page 67

5 A. Yes.
6 Q. Can you think of a specific instance of a product
7 that you isolated to add to the mix during your tenure?
8 A. Yes. We added a product by the name of lithium
9 bromide.
10 Q. Now, when you decided to add lithium bromide to

the group of products that the company was producing —
A. Will produce it. We did not produce it at that time.
Q. Yeah. When you decided to add it to the group that you would be producing, did you have to consult with anyone in the government to add a new product line?
A. No.

Page 68

Q. Now, in your capacity as marketing manager, how— what was your involvement with pricing?
A. Prices were determined among other.
Q. Among others by you?
A. Yes.
Q. Did the government have any input in the pricing function—
A. No.
Q. —of the company products?
so that if you wanted to give a price concession to a particular customer, you were completely free to do that without getting any sort of government approval?
A. Yes.

Page 69

Q. What did you do after January 1st, 1995, with the company?
A. I was nominated as a strategic business unit manager, which is equivalent to vice president, for inorganics product. And since I didn't like the name, I change it. And my cards read "Vice President, Industrial Chemicals."
Q. So you didn't like "inorganic," and you changed it to "industrial"?
A. I didn't like the SBU.
Q. There's that word again, "nominated." What do you mean when you say nominated as vice president?
A. I got a nomination from the president of the

company, formal—
Q. The president of Dead Sea Bromine Company?
A. Yes.
Q. And you used the word there "nominated" is that equivalent to being appointed? Or did somebody have to vote?
A. He gave me the—
Q. He just made you the vice president one day?
A. Yeah.
Q. But you weren't happy with the name, so you changed it.
Is that the capacity that you're serving in still today?

Page 70

A. Yes.

Page 72

Q. Now, is it true that sometime in 1995 Dead Sea Bromine Company ceased being a government company; is that correct?
A. Sometime in 1995 ceased to be a government company? Can you be more specific?
Q. Well, did the—did there come a point in time when the State of Israel's ownership fell below 50 percent?
A. Yes.
Q. And was that sometime in '95, to your recollection?
A. Yes.

Page 73

Q. Okay. Now, earlier you testified about these labor wages, guidelines that were applicable to the company. Do you know if those similar guidelines are applicable to all Israeli companies or just government

companies?
A. I — I couldn't tell. I know that we were — we as Dead Sea or as — sorry, as Bromine Compounds Limited we are specifically named on some of them.
Q. But just — just from your general knowledge of the Israeli economy, do you know whether or not the Israeli

Page 74

government dictates wage increases for companies that are not government companies?
A. From my general knowledge, I would say that they may recommend, but cannot dictate.

Page 75

Q. Okay. With respect to government companies, could you give me your understanding of what a special state share is? If I use that phrase, does it have any meaning for you? Do you know what I'm referring to?
A. Yes, I do.

Page 76

Q. Okay. Just tell me what your understanding of it is.
MR. BRANDT: You're not asking for a legal interpretation? That's fine.
THE WITNESS: The shares that give the government unique position that is different from the amount of shares that the government owns. Actually, it gives the government the right to veto any decisions that I believe the laws specify.

Page 79

THE WITNESS: Okay. The special government share

was issued at beginning of '92. When — the government sold
the part of Israel Chemical Limited and it wanted to protect its interest, some of the ICL more-dominant companies, such
as Dead Sea Bromine.
Q. Okay. So if I understand, your testimony with respect to the Dead Sea Bromine Company Limited is that the
earliest time the Sate of Israel owned a special state share was 1992?
A. Yes.

Page 85

Q. Do you recall the cases being removed from state court in Louisiana to federal court in Louisiana?
A. Yes.
Q. Do you recall having consulted with anybody in the government about that maneuver or that tactic?
A. No.

Page 86

BY DAVID SIEGEL: Q. With respect to the prior litigation, are you aware that Dead Sea Bromine and Bromine
Compounds Limited entered into an agreement with certain of
the other defendants in the litigation concerning market share and liability for the litigation in foreign countries?
MR. BRANDT: Read back the question, please.
(Record read.)
THE WITNESS: Yes.
BY DAVID SIEGEL: Q. Okay. Now, did Dead Sea

Page 87

Bromine or Bromine Compounds Limited have to consult with

the Israeli government before entering into those agreements?
A. No.
Q. Do you recall in the earlier litigation that there came a point in time when Dead Sea Bromine voluntarily waived immunity which it might have had under the Foreign Sovereign Immunities Act in the course of that litigation?
A. Yes.
Q. Did you have to consult with the Israeli government before waiving that immunity?
A. No.
Q. And with respect to the Louisiana cases you've also waived the immunity that might have existed under the Foreign Sovereign Immunities Act; is that correct?
A. Yes.
Q. Did you have to consult or did you consult with the Israeli government in making that decision?
A. No.
Q. Now, do you recall in the course of the litigation in Texas that the Dead Sea companies entered into a settlement agreement with the plaintiffs, my clients, in that litigation?
A. I do, yes.
Q. Did you have to or did you consult with the Israeli government before entering into those settlement

Page 88

agreements?
A. No.
Q. Okay. Has in either the Texas litigation or the Louisiana — well, I suppose it would only be the Texas litigation at this point. Has Dead Sea obtained lawyers in any of the foreign countries from which the plaintiffs hail?

A. Yes.
Q. And did Dead Sea consult with the Israeli government in obtaining those lawyers?
A. No, I don't think so.
Q. Now, in addition to not having consulted with the Israeli government prior to waiving immunity, had you or anyone at Dead Sea, to your knowledge, informed the Israeli government since that time of that waiver of immunity?
A. Say it again.
Q. Have you informed anyone within the Israeli government after the waiver of immunity of having taken that action?
A. No, I don't — I didn't do it. I don't believe anybody has.

Page 89

BY DAVID SIEGEL: Q. Have you disclosed it to anyone in the government?
A. We didn't disclose it.

* * *

BY DAVID SIEGEL: Q. I'm handing you what's been marked as Exhibit 3. Can you identify that document?
A. It's Government Companies Law 5735-1975.
Q. Okay. What is that, just in layman's terms? Is this the Government Companies Law that defines what a government company is?
A. I think this law regulates —
Q. Among other things.
MR. BRANDT: Among other things.
THE WITNESS: Yes.
MR. BRANDT: David, is it acceptable to you if the witness refers to the version in Hebrew?
DAVID SIEGEL: Yeah.
BY DAVID SIEGEL: Q. Now, I've just — I've just extracted a couple pages of it. We're not looking at the

entire law. But if you'll look at paragraph 4(a) which — on the Hebrew version I don't know if it's on the first page or the second page. Have you found it?
A. Yes.

Page 90

Q. Okay. Could you just read that, please? Well, that's not going to work, is it?
MR. PADEN: On the record? On the record?
BY DAVID SIEGEL: Q. Read it in English.
A. You couldn't find smaller letters?
"A Government company shall act in accordance with the business considerations by which a non-Government company is normally guided, unless the Government, with the approval of the Committee, prescribes other considerations for acting. This provision shall not apply to a Government company the basic documents of which prohibit the distribution of profits."
Q. Okay. What is your understanding of what that provision that you just read means?
MR. BRANDT: His layman's interpretation? Yes?
BY DAVID SIEGEL: Q. Yeah. Before you answer it, I'll just say on the record that, whenever I ask you a question like that, I fully understand that you're not a lawyer. So I'm not asking you for your lawyer's understanding. I'm asking you for your understanding.
MR. BRANDT: Okay. That's fine.
THE WITNESS: Now, can you repeat the question again.
BY DAVID SIEGEL: Q. What is your understanding of what that provision that you just read means, paragraph 4(a)?

Page 91

A. It means that a government-owned company should conduct business similar to a nongovernment-owned

company
when it comes to business, unless if the government decides
for its own reason and it has other consideration to act differently.
Q. Would it be fair to say, given that paragraph, then, that the primary objective of Dead Sea Bromine and Bromine Compounds is to make a profit?
A. Among other things.
Q. What other objectives would you include?
A. To develop the natural resources of the Dead Sea, to sell as much more as we can and to sell as much profit as
we can.
Q. Now, how is developing the natural resources of the Dead Sea a distinct consideration from selling products? I mean, does developing the natural resources have any value separate and apart from the fact that you can
then take them and sell them?
A. I believe the concept is to develop in Israel—although you can take the bromine and develop an industry out of Israel. The concept is to develop a business in Israel rather than an outside business.
Q. That would almost go without saying since the Dead Sea is located in Israel, isn't it?
MR. BRANDT: No, they—
BY DAVID SIEGEL: Q. There's no—obviously,

Page 92

there's no prohibition against doing business all over the world. And you've testified that Dead Sea Bromine has worldwide markets; is that correct?
A. Yes.
Q. Okay. So what do you mean when you say develop a business inside of Israel?
A. We spend a lot of money on R and D and other

processes. In theory, you can take the raw material, which is bromine, and ship it to Cyprus or whatever and develop the industry there. We want to utilize all what we invest and the bromine mostly in Israel to make the—to develop it in Israel.
Q. Okay. So the developmental phase, which might include R and D or dreaming up new product lines or new applications for the raw materials, those types of activities take place in Israel?
A. And the actual fulfillment of those activities.
Q. Okay. What do you mean when you say "fulfillment"?
A. To have the actual production.
Q. Okay. So there's a lot of production in Israel?
A. Correct.

Page 93

Q. Okay. And when you say that one of the primary objectives is to make a profit, would it be fair to say that the State of Israel—and I mean the government of Israel —doesn't have any particular interest in how that profit is generated in terms of choosing between product lines?
A. Again, I believe that they would like us to have the highest added value in Israel. And as a by-product, we have most of the profit generated by an Israeli production.
Q. Okay.
A. To tell you whether they favor one product line over another, I don't know.
Q. There would be—can you think of any reason, for example, why the government of Israel would have an interest in Dead Sea preferencing the flame retardant market as opposed to the agricultural chemical market?
MR. BRANDT: Object to the form of the question as calling for this witness to speculate as to what a government might think or do.

BY DAVID SIEGEL: Q. You can answer.
MR. BRANDT: You're free to answer if you can

Page 94

answer.
THE WITNESS: I don't know.
BY DAVID SIEGEL: Q. Okay. Well, let me ask you this. In all of your experience in working for these companies, did any government minister ever come to you and say, "I want this product line developed"?
A. No.

Page 95

Q. Okay. Now, if Dead Sea Bromine or Bromine Compounds are sued in ordinary lawsuits, not necessarily by shareholders, but any lawsuit that might be filed by an Israeli citizen against these companies in Israel, if a judgment is taken against one of these companies, does the government of Israel pay that judgment, or does the company pay it?
A. The company is paying it.
Q. To your knowledge, has Dead Sea Bromine or Bromine Compounds ever claimed any sort of governmental immunity in a lawsuit filed against it in Israel of any type?
A. I'm not aware of it.

* * *

BY DAVID SIEGEL: Q. Okay. If you'll look at what I've marked as Exhibit Number 4, can you identify this document?
A. It says, "The State of Israel, Ministry of

Finance, the Government Companies Authority, Jerusalem, the

Page 96

Committee for the Appointment of Legal Advisors for Government Companies."
Q. Okay. Now, I realize that this is March of 1971.
A. Right.
Q. And this predates your involvement with the company. I'm just using this as a representative example, because it talks about a subject that I want to ask you questions about. And that is how legal advisors for the company are appointed. This is a letter from the Ministry of Finance to the company. And it says that "The committee for the appointment of legal advisers for government companies has decided to approve the appointment of . . ." the lawyers. Is this procedure still followed—well, strike that.

Throughout your tenure with the company from 1976 to the present, is this the procedure for how legal advisers are selected and appointed?
A. Yes.

Page 97

What would happen, in your experience, if the company selected a law firm and the government didn't give its approval for that law firm?
MR. BRANDT: Are you asking in his experience has that happened?
BY DAVID SIEGEL: Q. Yeah. Has that happened?

Page 98

A. To the best of my knowledge, it did not happen.
Q. Okay. So as far as you know, every time the company selected a set of legal advisers and presented it to

the government for approval, it was approved?
A. I would say it's a little different. There was an attempt, request to change the legal advisers. And the company went through the procedure to change this—
Q. Request.
A. —request and was successful.
Q. The company was ultimately successful?
A. Yes.
Q. So the result was that the company got the legal advisers that it wanted in the final—
A. Yes.

* * *

BY DAVID SIEGEL: Q. Okay. Would you—could you identify what I've marked as Exhibit Number 5?
A. It states, "The State of Israel, the Government Companies Authority, the Director of the Authority, the Ministry of Finance, Jerusalem," February 3rd, 1993. The issue was "Bonus Policy in Commercial Government Companies."
Q. Okay. Do you recall having reviewed this document sometime in February of '93? Would—would this have been a document that you would have seen at the time?

Page 99

A. I would know if it existed, yes.
Q. Okay. What is a commercial government company? Is that a separate classification from noncommercial government companies?
A. Yes.
Q. Okay. What is the significance of the difference?
A. I think it's the previous document that was a reference to nonprofit companies. This is a profit-oriented company.

Page 100

Q. Well, I'm trying to define the process how it is

determined that a certain individual will get a bonus. If the board wants to pay a bonus to a certain individual, does it have to get approval from the Ministry of Finance to pay that bonus?
A. The ministry determine the rules, actually, the amounts and some basic rules to be followed. The board adopt it and provide management with more specific instruction.
Q. Okay.
A. Then management goes and decide.

* * *

BY DAVID SIEGEL: Q. Okay. I'll ask you to look at what I've had marked as Exhibit Number 6 and identify

Page 101

that document for me.
A. "The Government Secretariat, Jerusalem," February 22nd, 1984. It's "To: Members of the Government, From: The Deputy Secretary to the Government." And the item is "Giving Priority to Purchasing Israeli Products."

* * *

Q. Okay. I'm picking it up sort of in the middle of the paragraph. It says, ". . . these bodies shall give priority to purchasing Israeli products over imported products for so long as the quality and price of the local product comply with the criteria that have been determined . . . ."
Now, what does that mean when it says it's okay to buy—it's actually preferential to buy Israeli products as "long as the quality and price comply with the criteria that have been determined"?

Page 102

A. For example, in 2(a) it states that even if the price is by 15 percent higher than the imports, the—most likely the combination will be to still buy it made in

Israel.
Q. Provided that the quality of goods is equal?
A. Is equal, right.
Q. Now, who would make the determination as to whether or not the quality of the goods would be equal?
A. It's a tough question.
Q. Tough question.
A. Right.
Q. Would the company be involved in that determination?
A. Yes.
Q. Together with the government?
A. Yes.
Q. During your tenure with the Dead Sea companies, was this—was this a big issue? Was—was Dead Sea a large purchaser of products that were required for its business?
A. Yes.
Q. Did Dead Sea oftentimes purchase products from overseas rather than Israeli products?

Page 103

A. Yes.
Q. And in order to do that, you had to go to the government and convince them that certain conditions were apparent?
A. Correct.
Q. Okay. And was that ever part of your primary job—
A. Yes.
Q. —responsibility?
What time—what position was that that you were responsible for these things?
A. When I was head of finance.
Q. Okay. And what types of arguments would you make to the government for buying overseas products rather than

Israeli products?
A. In a specific case, the product required some foreign government approvals as far as the shipments, et cetera. And we claimed that, the Israeli company, it will take it too long to obtain such approvals, and we couldn't wait. So we asked them to approve the purchase of the foreign products for this reason. And it was granted.
Q. And that was granted?
A. Yes.
Q. Can you remember any other examples?
A. Yes. There was another example that we purchased some electrical equipments that were produced in Israel.

Page 104

And in this case the government told us, "You're going to buy Israeli-made."
Q. What was the alternative in that case?
A. To import it from—from Europe.
Q. And what was the result in that particular case?
A. That we bought it—we bought Israeli-made equipments.
Q. And you had argued to the government that you wanted to buy the European product?
A. Yes.
Q. And why did they say you had to buy the Israeli product?
A. They claimed that the Israeli company imports a fair amount of equipments from the same company. So it's virtually the same they imported.
Q. So you were actually purchasing from another Israeli company which had itself bought it on the—from the Europeans?
A. Part of the equipments were bought—of the component were purchased from a different source, but they put it together in Israel.
Q. Okay.

Page 109

Q. So if the company wanted to go purchase a piece of land for seven hundred thousand dollars, it could do so without any government approval?
A. It will require board approval, but not government approval.

Page 113

Q. Can you identify that document?
A. It says the "Directives of the Attorney-General Work Procedures, Resolution of Disputes Between a Government Company and Another Government Body."
Q. Okay. Do you want to take just a minute to review that.
(Interval.)
A. Yes. Okay.
Q. Okay. If you'll look at paragraph numbered 1 on

Page 114

the first page of that document, it says, "One should, as far as possible, avoid litigation in the courts for the purposes of resolving legal disputes in civil matters between a government company and the state . . ." and then it goes on.
Is it your understanding that it would have been possible or it is possible for a government company to sue the state if a dispute arose between them?
A. I don't know what you mean by "to sue."
Q. To file a lawsuit in a — in a court against the government.
A. Here we have procedures that tells you what — how a government-owned company should react.
Q. Right. And the sentence I just read says, as far as it's possible, you should try to avoid litigation. Now, my question is, can you infer from that that, if all of

these other methods don't work, that litigation is permitted?
A. I believe that if you didn't find all the solution, there may be cases where you can.

Page 125

Q. Okay. Dead Sea employees are not employees of the State of Israel, are they?
A. Correct.
Q. They do not receive a paycheck from the State of Israel?
A. Correct.

Page 126

Q. When a Dead Sea — when your secretary reports to work each day, she does not get any type of instruction from the State of Israel?
A. No.
Q. Do you?
A. No.

Page 128

Q. But do you mean to say that what Mr. Grinbaum does every day—
A. No.
Q. —in—in trying to maximize Dead Sea's profit and run the company—
A. No.
Q. —is determined by somebody in government?
A. No. This is—definitely not.

Page 129

Q. At any point in time in the past has there been a single employee in either Dead Sea Bromine Company or Bromine Compounds who was told what to do on a daily basis

or on a yearly basis by someone in the government?
MR. BRANDT: Other than what he's described in terms of the general parameters of the statute?
CHARLES SIEGEL: Well, other than nothing, because I haven't heard anything described other than what the statute says.
MR. BRANDT: All right. That's fine. As long as we have that understanding.
THE WITNESS: I don't believe so.

* * *

I think your earlier testimony was that Dead Sea Bromine Company was founded in 1955; is that correct?
A. Correct.
Q. At that time who was its—who owned Dead Sea Bromine Company?
A. I—I believe Dead Sea Works.
Q. And who owned Dead Sea Works at that time?
A. I can't—it was owned ultimately by the government. But I cannot tell you exactly through what—

Page 130

Is it your testimony that Dead Sea Bromine Company was ultimately owned by the government from its founding in
1955 up until 1995?
A. Yes.
Q. Okay. Now, are you familiar—and the same would be true for Bromine Compounds?
A. Yes.